NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

Congressional Information Service, Inc.

PRESIDENTIAL CERTIFICATIONS ON CONDITIONS IN EL SALVADOR

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

AUGUST 3, 1982

Printed for the use of the Committee on Foreign Relations

U.S. GOVERNMENT PRINTING OFFICE
98-270 O WASHINGTON : 1982

S 381-56

COMMITTEE ON FOREIGN RELATIONS

CHARLES H. PERCY, Illinois, *Chairman*

HOWARD H. BAKER, JR., Tennessee	CLAIBORNE PELL, Rhode Island
JESSE HELMS, North Carolina	JOSEPH R. BIDEN, JR., Delaware
S. I. HAYAKAWA, California	JOHN GLENN, Ohio
RICHARD G. LUGAR, Indiana	PAUL S. SARBANES, Maryland
CHARLES McC. MATHIAS, JR., Maryland	EDWARD ZORINSKY, Nebraska
NANCY L. KASSEBAUM, Kansas	PAUL E. TSONGAS, Massachusetts
RUDY BOSCHWITZ, Minnesota	ALAN CRANSTON, California
LARRY PRESSLER, South Dakota	CHRISTOPHER J. DODD, Connecticut

EDWARD G. SANDERS, *Staff Director*
GERYLD B. CHRISTIANSON, *Minority Staff Director*

CONTENTS

	Page
Hearing day:	
August 3, 1982	1
Statement of—	
Abrams, Hon. Elliott, Assistant Secretary for Human Rights and Humanitarian Affairs, Department of State	13
Anderson, Prof. Thomas, Department of History, Eastern Connecticut State College, Windham, Conn	92
Doherty, William C., Jr., executive director, American Institute of Free Labor Development, Washington, D.C., accompanied by Francisco Zaldana, Fesiconstrans; Samuel Maldonado, U.S.C. of San Salvador; Jorge Camacho, Acopai; and Jose Luis Grande Preza of the Christian Confederation of Workers	134
Donovan, Michael R., Danbury, Conn	221
Enders, Hon. Thomas O., Assistant Secretary of State for Inter-American Affairs, Department of State	4
Finn, James, Freedom House, New York, N.Y	97
Ford, William P., New Jersey Inter-Religious Task Force on El Salvador, Upper Montclair, N.J	229
Halperin, Morton H., American Civil Liberties Union/Americas Watch, Washington, D.C	111
James, Daniel, secretary, Committee for Free Elections in El Salvador, Washington, D.C	121
Nutting, Lt. Gen. Wallace H., USA, Commander in Chief, U.S. Southern Command	18
Prosterman, Roy L., Esq., professor of law, University of Washington, Seattle, Wash	165
Insertions for the record:	
Prepared statement of Hon. Thomas O. Enders	9
Prepared statement of Hon. Elliott Abrams	15
Prepared statement of Lt. Gen. Wallace H. Nutting	22
Prepared statement of the Boston Committee for Medical Aid to El Salvador, Boston, Mass	40
Rules of engagement for the employment of firepower in the Republic of Vietnam	44
Red Cross said ready to quit El Salvador—reprinted from the Washington Post, July 3, 1982	61
Executive Order 12365, May 24, 1982—foreign assistance and arms control	82
Prepared statement of Prof. Thomas P. Anderson	95
Prepared statement of James Finn	99
A Freedom House report in support of certifying further assistance to El Salvador	100
Prepared statement of Morton H. Halperin	113
Prepared statement of Daniel James	124
Prepared statement of William C. Doherty, Jr	136
Prepared statement of Prof. Roy L. Prosterman	168
Prepared statement of Michael R. Donovan	224
Prepared statement of William P. Ford	230
State Department's responses to additional questions submitted by Senator Percy	245
State Department's responses to additional questions submitted by Senator Dodd	248
General Nutting's responses to additional questions submitted for the record	259
Professor Anderson's response to an additional question submitted for the record	264

Appendix:

Letter to Senator Percy from William H. Webster, Director, FBI, dated August 17, 1982, regarding American churchwomen murdered in El Salvador ..... Page 271
Letter from the Center for Development Policy, dated August 2, 1982, concerning visit of U.S. citizens to El Salvador 272
Letter from Human Communications Systems, dated July 28, 1982, regarding land reform program in El Salvador 276

PRESIDENTIAL CERTIFICATIONS ON CONDITIONS IN EL SALVADOR

TUESDAY, AUGUST 3, 1982

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:11 a.m., in room 4221, Dirksen Senate Office Building, Hon. Charles H. Percy (chairman of the committee) presiding.

Present: Senators Percy, Helms, Hayakawa, Kassebaum, Pressler, Pell, Sarbanes, Tsongas, and Dodd.

The CHAIRMAN. The committee welcomes our honored guests this morning. And the committee will be gradually arriving. I chose to quickly leave the meeting with Foreign Minister Shamir to get over here immediately so as to start the meeting, feeling that my colleagues would not have to hear my opening statement, and I wanted to get this hearing under way as quickly as I could. Senators will be coming here from the very important meeting we have just completed in the other building.

We want to welcome you, Assistant Secretary Enders and Assistant Secretary Elliott Abrams and also General Nutting. I think it is significant that you are here today, too. We want to thank you for making yourself available, because a great many of the questions that have arisen in connection with the certification have arisen in connection with the role of the military training effort in El Salvador. This certification, in fact, relates explicitly to that effort and to the military assistance we provide the armed forces in El Salvador. It is important that we have the opportunity to hear from someone of your experience and perspective.

I have analyzed carefully the President's certification. We have listened yesterday to the intelligence briefings. I have personally made the conclusion that the certification is accurate, appropriate, and right and that it would be a tragedy to withdraw our support. We have been asked by representatives of the peasants yesterday to continue that support, particularly the military support. And I think that it is very significant.

I think every American who is deeply concerned about this should recognize that we are looking at every aspect of life in El Salvador and the prospects for stability in that area. The program of the administration obviously has problems, because the area is deeply fraught with problems. But, I think, so far as I can see, the certification is accurate.

But I would like to reflect some of the concerns that I have heard expressed and that will be expressed. We do begin this full day of

review of the issues simply because of their great importance and their controversial nature.

The task before us is to assess, each individually, whether the Government of El Salvador has made progress in the area of human rights, control of the armed forces, economic and political reforms, including land reform, elections, and the beginnings of a lasting political solution of the civil strife that confronts the country, and whether there has been progress in the investigation of the murders of American citizens in El Salvador.

The committee has received a great number of reports and statements as well as calls and correspondence asking us not to accept this certification, saying that there has been no progress in human rights observance and land reform and the investigation of the murders and so forth. In reviewing the evidence presented by those who ask the Congress to reject the certification and by the administration which makes the certification, I am struck that the principal difference between the two positions is not what constitutes compliance with certification goals but rather what constitutes sufficient progress in complying with the goals to warrant continued support for the effort.

For example, are the 10,000 titles issued in the land reform enough to show good faith when only 2 months ago the Constituent Assembly seemed bent on destroying the effort?

Is remanding the case of the churchwomen's murders to civil authorities enough to show progress, when we still believe the trial to be far off? Is the [illegible]ting of an investigative commission in the case of the three land[illegible]m workers, two of them American, enough to constitute pr[illegible]s that case?

What crea[illegible]e should we give to lower numbers of political violence when horrible atrocities continue and are emblazoned on the front pages of the papers day after day, it seems?

Are pronouncements to the military high command that human rights of the civil populations must be respected enough to assure us that they will be?

These are all questions that have troubled members of the committee and that make the certification itself a matter of public dispute.

A second question raised in the discussion of the certification is: Does continued U.S. involvement in El Salvador contribute to further progress in the certification goals or not? Some say our continued support for the Government gives those people who have already demonstrated a low level of commitment to reforms a free hand to dawdle and dissimulate.

Others say our aid is critical. Yesterday, representatives of the Salvadoran Union Movement met with Senators and staff and argued vehemently that without U.S. assistance and the performance conditions attached to it, the land reform would have been critically undermined in their country. One assumes that other goals could have been taken equally lightly.

I would like to say that there has been considerable editorial discussion about the conditions placed by the Congress that are adhered to and have been adhered to by the administration in the certification process, and statements that have been made by members of this committee about the continuation of aid, which some writers have interpreted as an invasion of the sovereign rights of another country.

Let me simply say that evidence we have seen to date from the intelligence community and otherwise, and certainly from the spokesmen for El Salvador and peasants, indicates that without that kind of admonition, without clearly laying it on the line, stating exactly how we feel and what the conditions will be for our continued aid, there would not have been the kind of progress that has been made.

And all those cynical editorials that I have seen about our interfering in the affairs of others, I think they are muddle-headed and soft-headed. Would they run a bank that way? Would they just pass out taxpayers' money without any conditions?

Of course, if we are spending money and putting our reputation on the line, we intend to impose conditions, and will continue to impose them. And the people of El Salvador are asking us, through their representatives that have come here, to continue those conditions.

In these and other reports, and even from the qualified assertions that the administration makes in its reports, I am convinced that the certification process has been very useful, and it has been effective in helping Salvadorans to choose between continued U.S. assistance with action on reform, and old habits of violence, repression, and restrictions of opportunities for the mass of people.

The certification puts the burden for that choice squarely on the shoulders of the political leaders of El Salvador. If the pressure of the certification has been effective in bringing about a little progress in each of the certification areas in the last 7 months, then I believe we should be encouraged to keep up that pressure.

We cannot wash our hands of El Salvador. That country's troubles will be with us whether we are deeply involved there or whether we just abandon them and turn away from it. Our stake in the political and economic future of El Salvador may argue that we continue to work with the leadership of that country, pressuring them, coaxing them, working with them toward common objectives and goals.

The certification process gives the administration both a carrot and a stick to work with. In order to continue our involvement with El Salvador, there are several questions that we need to be able to answer, several points we need to agree on:

What criteria should we use to judge whether sufficient progress has been made in the certification goals, and by these criteria can we agree that there has been some progress? Can we be confident that the administration is pressing these goals in El Salvador as diligently as the public in the United States demands? The credibility of our policies in the region is at stake in this. Is there some hope that out of this experience there will emerge a Salvadoran Government that will fully embrace these goals as its own?

I know that the distinguished witnesses before us, Senator Pell, can help with those very difficult questions.

But I do want to say that I am impressed with the diligence with which the administration has carried out the certification requirements under law. And you have our sympathy in working on that problem. But I think you have exerted due diligence in that regard, and I think we have done, within the confines of the limitations placed by law, a splendid job in working with them from the military aid standpoint.

Senator PELL. Thank you, Mr. Chairman.

The Presidential certification on El Salvador, which we have now received and had a chance to look over, I believe raises almost as many questions as it answers. The basic premise of the certification is that while political violence and human rights violations still take place, the numbers are smaller, the trend is toward improvement, and there has been, in fact, a smidgen of actual improvement. Therefore, it is determined that El Salvador should continue to receive military assistance.

I would ask, though, is it really appropriate to consider the lower numbers presented in the certification document as satisfaction of the law's requirement that the Government of El Salvador is actually "making a concerted and significant effort to comply with internationally recognized human rights"?

I was looking for a little more in the way of specific efforts and signs of improvement on the part of El Salvador. I would agree there are positive signs, such as the declaration by the Ministry of Defense and others that abuses on the part of the military and security forces will simply not be tolerated.

I would question, though, whether the relatively small number of actions taken against individual members of the security forces are effective and large enough to conclude that effective control is being exercised over the military.

Moreover, there has been little evidence of progress in the case of the murdered churchwomen as well as in the case of the land reform specialists and the missing freelance journalist.

I know that in the course of this hearing I plan to ask the administration what assurances they have that the case of the murderers of the churchwomen will ever come to trial. And also, I think, we should ask the family members of two of the churchwomen this afternoon their assessment of what the administration calls "progress," what degrees of cooperation they have received from the administration and, more importantly, from the Government of El Salvador, and what they feel will be the final disposition of the case.

I think this hearing in which the administration will have a chance to present its view, and it has very able representatives here, should go far in helping the committee as well as the American people to decide if there really is progress being made in El Salvador, a foremost consideration in determining what our policy should be there.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Pell.

Secretary Enders.

STATEMENT OF HON. THOMAS O. ENDERS, ASSISTANT SECRETARY OF STATE FOR INTER-AMERICAN AFFAIRS, DEPARTMENT OF STATE

Ambassador ENDERS. Mr. Chairman, thank you very much. We appreciate this opportunity to appear before the committee again. I have given you a prepared statement which covers many of the issues which you so ably discussed in your opening statement. Could I set that aside and, if you would agree, concentrate on three points here.

First, I would like to set the stage a little bit. We are talking here about the last 6 months, but perhaps it is useful to look back at where we were when we first became deeply engaged and involved in El

Salvador. That was 3 years ago, at the time a reforming group of army officers overthrew the old military government, and we backed that new government.

Under the last two administrations, under the last two Congresses, we spent a lot of money, and I think probably more psychic energy on El Salvador. What has been accomplished in that time? Well, let me make a comparison. Up until 1979 El Salvador was ruled by a military government that periodically arranged for its own reelection. Now we have a government in El Salvador that emerged from an election in which nearly all adult Salvadorans participated.

In 1979 most of El Salvador's best land belonged to a few hundred wealthy families. In fact, 40 percent of all El Salvador's farmland belonged to less than 2 percent of the families on the land. Today, one-half of that land, or 22 percent of the total farmland of the country, has been redistributed to 60,000 poor farmworkers and their families.

In 1979 El Salvador's violent left seemed to have history on its side. Today, despite Cuban and Nicaraguan backing, a much ballyhooed "final offensive," and a broad attack on the elections, guerrilla progress has been arrested and the slow process of overcoming their armed violence has begun.

I think perhaps the most striking measure of progress in this time, Mr. Chairman, is the transformation of the military from an institution dedicated to the status quo and closely linked to landholding families to one that spearheads the land reform, as we have seen in that last 2 months, and supports a constitutional democracy protecting the free and open elections that occurred.

In the course of the last 3 months, the most controversial issue has been the question of land reform. Perhaps as my second point I could concentrate on that. Clearly, there was immediately after the election a concerted attempt to derail the reforms. In the name of perfecting flaws in the reform legislation—and heaven knows there were flaws in that legislation; for example, it was prohibited to rent agricultural land in El Salvador, clearly a self-destructive provision in a country whose economy was already ravaged by violence.

But in the name of perfecting flaws, the Constituent Assembly, and some members of the new government, sent out a massive political signal that the reform was dead. Evictions of peasants surged, as we know. New titling applications stopped altogether.

Then came the counterattack. You mentioned some of its dimensions. Issuance of provisional titles did resume. Altogether, about 5,000 such titles have been given out since March 28, compared to a total of 27,000 before then. We believe that some 2,000 evictees have been restored to the land they rented. Less than those turned out. But the effort is continuing with strong support from the military. Evictions apparently have fallen very sharply in July.

Perhaps the most decisive sign of resumed progress is that since the elections the first definitive titles have been given out, and the first compensation paid to small plot owners. A critical part of this struggle has been the restoration of the legal status quo ante. And this was important because it figured very much in the hearings you had 2 months ago, Mr. Chairman.

At that time, a law which was passed on April 18 by the Constituent Assembly gave the appearance of suspending rights under the land

reform and a clarification which was issued on May 18 by the Constituent Assembly which restored most of those rights, left a loophole, and that loophole is the subject of much discussion in this committee.

The clarification defined land reform beneficiaries as those "enjoying tenancy" as of May 19, thus, according to one possible interpretation, implicitly excluding campesinos who had been evicted earlier.

This issue, I am glad to report, has finally been resolved just this last week by President Magana, who instructed his administration to honor the applications of all persons who rented lands as of the passage of the original decree on April 18, 1980, regardless of whether they still occupied the land or not.

Now, in assessing the land reform, I think it is important to be clear on what has happened and what has not happened. The most sweeping part of the program, phase I, under which 325 large estates were converted into 287 working cooperatives consisting of more than 30,000 of their former workers, continues to function normally.

Phase II, under which some 1,700 medium-sized estates were taken over, among them the country's best coffee farms, was deferred from the very start as beyond the country's administrative and financial capacity. That is really not surprising. Already, the phase I and phase III involve transfer of some 1 billion dollars' worth of land with, so far, no really substantial or adequate provision of money for compensation. It is not surprising that this was judged to be beyond the country's capability.

And neither the Carter administration nor the Reagan administration has backed this phase II. And I think both were right. In contrast to the very large farms, many of these medium-size farms were owner operated and quite efficient.

The controversy has stemmed on the land to the tiller program, phase III. Perhaps it is appropriate now that you are taking a look in depth, Mr. Chairman, to ask what the future of this part of the program is. And I think that can be described as depending upon three factors, some of which can be influenced by the Salvadoran Government and by our Government, some of which are to some degree independent of both of us.

The first factor is the security situation. And that can make or break the program. Perhaps I could illustrate this with a chart. Most of the applications for phase III titles have been made in this part of the country [indicating] and an average of 60 percent of the estimated total applications that might be made in this country have received provisional titles.

Now, this is also the part of the country which has been least affected by the insurgency, and security is generally quite good. The main areas affected by the insurgency have been here [indicating], they have been here [indicating] and here and here [indicating]. And you find in this part of the country the highest total of provisional applications that has been given out as a percentage of estimated total beneficiaries is 27 percent. And in one case, Chalatenango, a province very hard hit by insurgency, it is only 3 percent.

The point of this is that the ability to carry out the land reform is very directly linked to the ability to control the insurgency.

Now, obviously, that is not all. The second factor which will affect the future of the land reform is owner resistance. Most of the owners

of these plots that are subject to phase III land reforms are small- or medium-sized landholders themselves. Their average holdings are estimated at roughly 24 hectares, which is only three times the maximum area their tenants can each claim from them.

They are generally not absentees. Indeed, often they have influential positions in local government, commerce, or the security forces. Although the pattern varies, many owners have used intimidation, legal means, or violence to prevent or reverse the transfer of land.

There is a lot that the Salvadoran Government and the Salvadoran Army can do about this. They can act promptly to restore evictees to the land. They can push the process of issuing both provisional and definitive titles more vigorously. And they can begin to compensate owners, because one powerful reason that owners resist is that practically none of them have been paid for their lands, and definitive titling is conditioned upon compensation payment.

Compensation, Mr. Chairman, is one way that the United States can help. The House Foreign Affairs Committee earmarked the local currency proceeds of $20 million of a supplemental appropriations for the Caribbean Basin Initiative to land reform compensation. This is a welcome action to remedy a weak point in the reform program.

A final factor in the future of the land reform is campesino participation, because nothing happens in this process unless the campesino takes the initiative and asks for a title. The universe of potential applicants has been variously estimated between 60,000 and 160,000. Whatever the number, it is clear that the initial 30,000 are the easy ones, those to which the campesino himself was prepared to take the initiative and step forward to claim his land.

The rest will not be easy. Over the past year, there has been a progressive drop in new applications. There are a lot of explanations: inertia, fear of retaliation, or deals with landowners. The Salvadoran Government has begun a new campaign to encourage campesinos to apply. It must convince them that it is worthwhile and safe to apply.

What we would propose to do in the course of the next certification hearing is to see whether we cannot reach an understanding with the Salvadoran Government on a specific plan for carrying the land reform forward in its phase III. We might concentrate on three or four departments to try to bring answers to each of these three questions together. That would help the Government to develop the momentum behind the program again, and it would also provide a framework for the next certification.

Mr. Chairman, you mentioned the investigations of the murders of our countrymen and countrywomen in El Salvador. In the case of the four churchwomen, five former members of the National Guard were charged in February with aggravated homicide and are awaiting trial. The case against them was developed in the 5 months prior to February 1982 by a special commission named by the Salvadoran Government with strong support from our Embassy and the FBI.

Since then, as required under Salvadoran law, the trial judge has reinterviewed all the witnesses and begun the preparation of the detailed analysis of the evidence on which the trial itself will be based. The government has now proposed that 14 additional witnesses be called, including the head of the National Guard. We expect a trial date to be set this fall.

I am quite certain that the delays, first in the investigation and now in the trial, have caused much anguish to the families of the churchwomen. These families have repeatedly expressed skepticism that the inquiry was complete and that the National Guardsmen could have murdered their relatives without orders from above.

It is, of course, difficult to prove a negative. The Embassy, the State Department legal adviser and, for much of the last year, the FBI, have each had a man on the case almost full-time. The available evidence suggests that the five former Guardsmen now scheduled to stand trial acted alone. Indeed, there is actually some positive evidence that there was no complicity higher up.

That is why I was particularly surprised to see a remark in a UPI story published today from former Ambassador White, indicating that there is now a report out of El Salvador that shows that there is written evidence that these women were killed on orders from a chain of command.

We do not have such a report, Mr. Chairman. And, of course, if anybody has evidence of this kind, I think it would be very important and proper for them to come forward immediately and make it available to the FBI and to ourselves and to the Salvadoran investigators.

In the case of the two land reform American advisers, there has been first a setback and then a renewed forward movement. A Salvadoran court of appeals upheld a suspension of the case against two suspects on grounds of insufficient evidence. But in April, using procedures similar to those in the churchwomen's case, the Salvadoran Government assigned a special commission to seek evidence sufficient to reopen and conclude the case.

Once again, our Embassy and the FBI are involved, along with a former FBI agent affiliated with the AFL–CIO. The first results are quite encouraging. In the case of Mr. John J. Sullivan, an American freelance journalist who disappeared while on assignment in San Salvador in December 1980, we have unfortunately little to report. During the certification period, a number of leads were followed without developing any credible information. Acting on one such lead, the Government of El Salvador exhumed a body which had been identified by anonymous tips as possibly that of Mr. Sullivan. It proved not to be so.

Then two Salvadorans associated with the guerrillas claimed to have information on the case, but our contacts with them failed to turn up any evidence. We are satisfied that we have been accorded the cooperation of the Salvadoran authorities in this case, and we will continue to pursue every lead.

Salvadoran criminal justice, Mr. Chairman, has become almost inoperative. Over the past year many of us in the Embassy and State Department have learned how excruciatingly difficult it can be to start it up again. But we are determined to succeed. We are, after all, not seeking revenge but we insist that the Salvadorans make their legal system work to bring the murderers to justice. In itself, that would be an important step toward ending lawlessness in the country.

Mr. Chairman, you made some remarks on the certification process with which I would like to associate myself. It does reflect very much the goals which are shared broadly in the administration and the Congress for our policy in El Salvador. But I think all of us are aware,

also, of the limitations of the certification process. It requires us to make an up-or-down judgment when reality is always a mass of positives and negatives. It requires us to threaten to cut off military assistance when we know that an actual cutoff of assistance would defeat the goals of the policy we are pursuing.

I do not think anybody doubts that if the United States were to cease to provide security assistance to El Salvador, there would be no more free elections and there would be no more land reform, and in the ensuing chaos the killing would soar.

But for all of that, the administration and, I believe, the Government of El Salvador have attempted to use certification as a means to achieve the required progress. What I am reporting today is that for all the problems, there have been some real gains made in that unhappy country. Thank you.

[Mr. Enders' prepared statement follows:]

PREPARED STATEMENT OF HON. THOMAS O. ENDERS

Mr. Chairman, Section 728 of the International Security and Cooperation Act of 1981 conditions continued assistance to El Salvador on ongoing progress in human rights, control of all elements of the armed forces, land reforms and the holding of free elections. In addition, Congress has rightly moved to include progress in bringing to justice those responsible for the murder of American citizens in El Salvador.

The Administration shares in full the view of the Congress that progress toward these goals is essential to the success of American policy in El Salvador.

Last week the Secretary of State, acting on authority delegated to him by the President, certified that progress had been made in each of the areas specified by law.

I believe the facts amply justify this certification. In one area—creation of democratic institutions—the gains are very substantial. In others—human rights and aspects of the land reform—progress is marred, but real.

Let me begin by summarizing what Salvadorans have achieved with our help in the 3 years since the previous Administration and the previous Congress engaged the United States in support of democracy, reform, and security in El Salvador.

Until 1979, El Salvador was ruled by military governments that periodically arranged their own reelection. In 1982 El Salvador has a government that emerged from an election in which nearly all adult Salvadorans participated.

In 1979, most of El Salvador's best land belonged to a few hundred wealthy families. In fact, 40 percent of *all* El Salvador's farmland belonged to less than 2 percent of the families on the land. Today, half of that land has been redistributed to 60,000 poor farmworkers and their families.

In 1979 El Salvador's violent left seemed to have history on its side. Today, despite Cuban and Nicaraguan backing, a much ballyhooed "final offensive," and a broad attack on the elections, guerrilla progress has been arrested and the slow process of overcoming their armed violence begun.

Perhaps the most striking measure of progress is the transformation of the military from an institution dedicated to the status quo to one that spearheads land reform and supports constitutional democracy.

El Salvador is strategically important to the United States. Should it fall to a Cuban and Nicaraguan backed armed minority, what country in Central America would be secure? Surely not Costa Rica, which has no army; probably not Honduras, which would then be caught between two Marxist-Leninist countries; nor Guatemala, already challenged by a virulent insurgency. It might not be long before Panama, Colombia, or southern Mexico, were at risk.

El Salvador is important to us politically. If we abandon a country that reforms its land-holding system and transforms itself into a democracy, who in the future will choose reform or democracy when challenged by guerrilleros supported from outside?

El Salvador is important to us because of its proximity. A lot of Salvadorans are living in our country already—some say about ten percent of El Salvador's

population. Should El Salvador be overcome by the violent left, far more of its people will come here.

Let me start with elections, which *are the key to so much else. Over time* governments that must answer to the people are far less likely to cause or tolerate abuses of human rights. If democracy can be made to work, all our goals can ultimately be met.

All of us saw on television the long, long lines of Salvadorans waiting to vote, in some cases under the threat or fact of violence. One of our election observers, Father Ted Hesburgh of Notre Dame, found thousands of people walking in rebel-held areas back in the hills near the Honduras border. "They had all been menaced by the guerrillas," Hesburgh wrote in his diary, "but they were still voting and this again was a victory for the people."

Two hundred foreign observers, 800 media representatives and millions of TV spectators saw what happened. No significant fraud was reported or charged by losing or winning party.

Yet some say the results weren't valid, because the extreme left didn't participate.

But the extreme left didn't participate despite efforts by then-President Duarte, supported by the United States, to convince them to do so. Instead they attacked the elections, threatening individual voters with maiming and death. Some say the extreme left didn't participate in the elections because its candidates feared for their lives. In fact, they were trying to make the voters fear for their lives.

No one can minimize the difficulties the new Salvadoran democracy faces. Its government is a coalition. All the skills of compromise and comity are still to be learned. Democratic processes must start in the midst of economic collapse and ongoing strife. Yet they are starting.

The Government of National Unity will govern until presidential elections are held in late 1983 or early 1984. The Constituent Assembly will draft a new constitution, establish the timing and ground rules for the presidential election, and function as an interim legislative body.

The elections, the peaceful replacement of a civilian-military junta with a representative civilian government system, and constitution-making are all steps in the beginning of the democratic process in El Salvador. President Magana and other government officials are working on an amnesty program. The constitution and the presidential elections will provide additional opportunities for those elements associated with the guerrillas who can accommodate to democracy to join in the democratic process and influence the future of their country through the ballot box rather than through force of arms. We hope they will.

HUMAN RIGHTS

All available evidence suggests that the most serious violations of human rights—deaths attributable to political violence—are on a slow downward trend.

A complete tabulation of monthly totals from five different sources is contained in the certification. All these estimates—from our Embassy in El Salvador and from four different Salvadoran organizations, including groups sympathetic toward the guerrillas—suggest an unmistakable downward trend. For the period of this certification, February to June 1982, reported deaths range from between a low of 1,500 and a high of 2,600 (July figures are not yet available). For the period of the original certification, August 1981–January 1982, the range was from 2,000 to 6,000. For the six months before that, from February 1981 to July 1981, the range was higher still, from 3,000 to 9,000.

All of these statistics are defective—probably those of the dissident organizations more than others; they do not make their data available for verification. Whatever their methodology, they all show less killing.

Some concerned with human rights have expressed perplexity at their encouraging trend. They argue that political deaths are down because most people who are a threat have been killed. Or that the killers are concealing their work more skillfully.

We believe there is something much less sinister at work here. The government has been working hard to control both official violence and the guerrillas. Moreover the genius of democracy is to provide alternatives to violence to reconcile opposing political interests—and political passions.

The reporting organizations shown particularly low totals since the elections. I want to underscore this point, because there continue to be allegations that

political violence has increased since the new government took office. We can't support that conclusion.

I do not mean to suggest that today's level of killing, however much reduced from yesterday's, is acceptable. It is not.

Nor are other aspects of the human rights picture wholly satisfactory. For the last 3 years, the judicial system has been virtually paralyzed. Persons suspected of political crimes have rarely been arrested. Persons arrested have almost never been convicted. Salvadorans, fearing for their lives, cannot rely on their system of justice to function.

In the last 6 months, we have seen some improvements. Arrests have been made more quickly and surely than before in political crimes or crimes alleged to involve powerful or well-situated persons. Yet trials and convictions still do not occur. They now begin again. The recent appointment of widely respected persons to the Supreme Court is an important first step.

Allegations of disappearance and torture continue. The U.S. Embassy investigates every case it hears of, to the best of its ability. There have been many fewer allegations of massacres during this reporting period than last. This may be in part because many earlier reports proved to be fabricated or exaggerated. Whatever the reason, fewer large-scale incidents have come to our attention.

El Salvador is in the grip of civil strife. The guerrillas claim the right to kill in the name of a higher good. So do death squads on the right. But little by little the violence appears to be receding.

One element of the human rights picture, and one element of the certification, is government control over the various security forces.

The main security force is the army, whose mission is combat against organized guerrilla units. Significant efforts have been made during the last half year—in the Defense Minister's worded instruction to the army, through the well-publicized punishment of 109 army members, through human rights training given units trained in the United States—to prevent abuses.

A second is the National Police, whose mission is the security of major highways and cities. It has improved its nationwide communications and is widely believed to have limited abuses.

A third is the Treasury Police, whose mission is customs and border control, but which is often the unit with the best intelligence on guerrilla activity. Its reputation is less good than that of the other regular security services.

A fourth is the National Guard, whose mission is local security and local constabulary. Traditionally widely dispersed, reporting to the municipal or departmental commanders, the Guard has often acted independently. Communications are improved, but there is much to do.

Finally, there are the Civil Defense and the Territorial Guards (or patrulleros), locally hired and paid irregulars that are ill-equipped, ill-trained and not really subject to central government control. In some cases, these local units can cause serious problems. For example, Civil Defense Force members and even commandantes locales were arrested in connection with some of the May-June killings of Christian Democratic Party members and officials.

Although civil strife has blurred the missions and stationing of various security forces, the government has consistently worked to improve central control through the Ministry of Defense. Military leaders have made concerted efforts to make it clear to remote rural security force contingents that abuses must be stopped. Disciplinary action, including arrests, has been made against retired as well as active duty personnel. Although U.S. law prohibits U.S. training of police personnel, we support the Salvadoran Government's efforts by including human rights instruction in all U.S. training of Salvadoran military personnel.

In a word, Mr. Chairman, this is a mixed picture. The central government is making progress. But it has a long ways to go to achieve full success.

LAND REFORM

This is the question that has aroused the greatest controversy in El Salvador and in the United States in the last 6 months.

Immediately after the elections, there was a concerted attempt to derail land reform. In the name of perfecting flaws in reform legislation—and there were some very real flaws: for example it was prohibited to rent agricultural land, a self-destructive provision in a country whose economy was already devastated by sabotage—the Constituent Assembly and some members of the new government sent out a massive political signal to the country that the reforms had been suspended. Evictions of peasants surged. New titling applications stopped.

Then came the counterattack. Issuance of provisional titles resumed, and altogether 4,865 such titles have been given out since March 28, compared to a total of 27,215 before then. We believe that some 2,000 evictees have been restored to the land they rented, less than those turned out, but the effort is continuing with strong support from the military. And evictions have apparently fallen sharply in July.

But perhaps the most decisive sign of resumed progress is that since the elections the first definitive titles have been given out; the first compensation paid to small plot owners.

It is important to be clear on what has and hasn't happened.

The most sweeping part of the reform program—Phase I under which 328 large estates were converted into 287 working cooperatives consisting of more than 30,000 of their former workers—continues to function normally.

Phase II—under which 1,700 medium-sized estates were to be taken over, among them the country's best coffee farms—was deferred from the very start as beyond the country's administrative and financial capability. Neither the Carter nor the Reagan Administrations backed it, rightly in my view. In contrast to the very large farms, many of the Phase II farms were owner-operated and quite efficient.

It is on the Land-to-the-Tiller program—Phase III—that the controversy has centered. What is the future of Phase III? That depends on three factors which to some degree can be influenced by the Salvadoran Government and by our Government, and to some degree are independent of us both.

The first factor is the security situation. It can make or break the program. In Western El Salvador—largely untouched by guerrilla attacks—some 60 percent of estimated potential beneficiaries already have provisional titles. But in the border departments and in the East—where in many places heavy fighting has displaced peasants from their land—only 10 percent of estimated potential beneficiaries have received provisional titles. Major progress there depends on the success of anti-guerrilla efforts. And that's where the bulk of the potential beneficiaries live.

The second factor is owner resistance. Most of the owners are small or medium-sized land holders. Their average holdings are estimated roughly at 24 hectares—only three times the maximum area their tenants can each claim. They are generally not absentees; indeed often they have influential positions in local government, commerce, or security forces. Although the pattern varies, many owners have used intimidation, legal means or violence to prevent or reverse the transfer of land.

There is a lot the Salvadoran Government and army can do about this. They can act promptly to restore evictees to the land. They can push the process of issuing both provisional and definitive titles vigorously. And they can begin to compensate owners. One powerful reason that owners resist is that practically none of them have been paid for their lands; and definitive titling is conditioned on compensation payment.

Compensation is one way we can help. The House Foreign Affairs Committee earmarked the local currency proceeds of $20 million of the supplemental appropriations for the Caribbean Basin Initiative to land reform compensation. This is a welcome action to remedy a weak point in the reform program.

The third factor is campesino participation. Nothing happens if the campesino fails to take the initiative and ask for title. And, as this chart shows, the number asking has been falling each month since a year ago. There are a lot of explanations: inertia, fear of retaliation, deals with landlords. The Salvadoran Government has begun a new campaign to encourage campesinos to apply. It must convince them that it is worthwhile—and safe—to apply That is essential.

No one doubts that land-owning peasants will be a strong bulwark against Marxist-Leninist subversion. Much has been accomplished in this program. We must now help the Salvadorans drive it to a conclusion. To this end we will propose to the Salvadoran Government that it develop a specific plan, including perhaps a special focus on three or four departments. For El Salvador, such a plan would help the government organize the final push. For us, it would provide a framework in which to consider the next certification.

Finally, let me report on the investigations of the murders of our countrymen and women in El Salvador.

In the case of the four churchwomen, five former members of the National Guard were charged in February with aggravated homicide and are awaiting trial. The case against them was developed in the 5 months prior to February 1982 by a special commission named by the Salvadoran Government, with strong support from our Embassy and the FBI.

Since then, as required under Salvadoran law, the trial judge has re-interviewed all the witnesses, and begun the preparation of the detailed analysis of the evidence on which the trial will be based. The government has now proposed that 14 additional witnesses be called, including the head of the National Guard. We expect a trial date to be set this fall.

There has been less progress in the case of the two American land reform advisors. The Salvadoran Court of Appeals upheld the suspension of the case against two suspects on grounds of insufficient evidence. But in April, using procedures similar to those used in the churchwomen's case, the Salvadoran Government assigned a special commission to seek evidence sufficient to reopen and conclude the case. Once again our Embassy and the FBI are involved. First results are encouraging.

The case of Mr. John J. Sullivan, an American freelance journalist who disappeared while on assignment in San Salvador in December 1980, has received and continues to receive the attention of the highest levels of the Salvadoran Government. A number of leads have been developed without positive results. We are satisfied that we have been accorded the cooperation of the Salvadoran authorities in this case and that this cooperation will continue.

I remarked earlier that Salvadoran criminal justice had become almost inoperative. Over the past year many of us in the Embassy and State Department have learned how excruciatingly difficult it can be to start it up again. But we are determined to succeed. We are not seeking revenge, but we insist that the Salvadorans make their legal system work to bring the murderers to justice. In itself that would be an important step toward ending lawlessness in that country.

Mr. Chairman, I think all of us are aware of the limitations of the certification process. It requires of positives and negatives. It requires us to threaten to cut off military assistance to achieve the goals of our policy, when an actual cut-off would defeat these goals. For who doubts that if the United States ceases to provide security assistance to El Salvador, that there will be no more elections, that there will be no more land reform, and that in the ensuing chaos the killing will not diminish, it will soar.

Clearly there are enough contradictions in the process we have designed to prevent us from being self-righteous about it.

But that said, the Administration—and, I believe, the Government of El Salvador—have attempted to use certification as a means to achieve the required progress. What I am reporting today is that for all the problems, there are real gains being made in that unhappy country.

The CHAIRMAN. Thank you very much for a very fine statement, Secretary Enders.

Secretary Abrams.

STATEMENT OF HON. ELLIOTT ABRAMS, ASSISTANT SECRETARY FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, DEPARTMENT OF STATE

Mr. ABRAMS. Thank you, Mr. Chairman. I would like to submit my statement for the record and make a few brief remarks.

The CHAIRMAN. Your full statement will be incorporated in the record.

Mr. ABRAMS. Thank you. I welcome this opportunity to appear here again to discuss the human rights situation in El Salvador. To understand where things stand today in El Salvador, we must take a look also at where El Salvador has been and where it is going.

Three years ago El Salvador had a government that came to power through probable fraud and which did not represent the will of the Salvadoran people. Now there is a government in El Salvador that has come into power as a result of a fair and honest national election in which the overwhelming majority of the electorate freely participated.

Three years ago the Government of El Salvador served an oligarchy that controlled the vast majority of productive agricultural land as

98-270 0 - 82 - 2

well as the means of financing credit. Now almost 20 percent of El Salvador's arable land has been distributed to the tillers.

While violence has been endemic in El Salvador's history, 2 years ago political killings may have been at an all-time high. Political violence is always difficult to quantify, but a decline seems to have occurred over the past year. During the last 6 months this trend has continued. As the certification states, a significant number of security force personnel have been disciplined for abuses, five suspected killers of the four American churchwomen have been officially charged with murder. The case against these individuals continues, and we fully expect they will be brought to trial.

Of course, we have not seen all of the progress we would like to see concerning control of violence. But the signs, the directions have been positive. Not only do Embassy reports based on the Salvadoran press show this trend, but other monitoring groups, regardless of political orientation, show a similar trend.

Moreover and more importantly, on March 28 the Salvadoran people went to the polls and experienced an historical event unique in their troubled and violent history. They participated in a free and honest election that brought them the government they collectively chose. Almost a million and a half people voted, which is probably about 80 percent of the eligible electorate.

The results of that election are significant in many ways. The results show that the vast majority of the Salvadoran people desperately want peace and reject the violent alternatives offered by the Marxist-Leninist insurgents. The election also shows that the Salvadoran people have taken the first step to integrate themselves into a political system in which they have not previously had a chance to participate significantly.

The results of the election indicate that the majority of the Salvadoran people believe that an elected government offers the best possible hope for greater respect for basic human rights. Mr. Chairman, the people of El Salvador are today engaged in an effort of extraordinary difficulty. They are attempting to complete a thoroughgoing economic reform, which has broken the power of the old oligarchy. Simultaneously, the have underway perhaps the most difficult transformation any society faces, the transformation from dictatorship to democracy.

And most extraordinarily of all, they are trying to do all of this in the midst of a bloody guerrilla war. Human rights violations in El Salvador continue at levels which could easily dishearten us. But we cannot allow ourselves to be disheartened, for the situation is improving. We must help El Salvador move toward democracy as long as its people are willing to risk their future in this struggle.

When one recalls the history of this poor and violent country, when one reflects on the magnitude of the changes underway in the economic and political structure in El Salvador, when one examines the violence caused by the guerrilla war, one must not be disheartened by how far El Salvador has to go to attain full protection of human rights. On the contrary, one must be surprised at how far El Salvador has come in just a few years.

Progress must continue. The foundation for building democracy has been laid. But so much work remains. The progress in the area of

human rights is clear, but so many abuses remain. The question for us is whether we will help the Salvadorans in their extraordinary effort to transform their society or leave them to struggle against the enemies of democracy alone.

Surely, their progress, their freedom, is our goal as well as theirs. Thank you, Mr. Chairman.

[Mr. Abrams' prepared statement follows:]

PREPARED STATEMENT OF HON. ELLIOTT ABRAMS

Mr. Chairman, I welcome this opportunity to appear before you again today to discuss the human rights situation in El Salvador.

When I last appeared before the Congress to discuss this topic, I mentioned that our Annual Country Reports' section on El Salvador documented the good and bad conduct of a beleaguered government, that human rights violations of a very serious nature had occurred, and that innocent civilians have been murdered by forces contesting this most bitter of civil conflicts. I deeply wish that I could state that these violations had ceased, that murder and violence in El Salvador was not a common occurrence, and that tremendous progress had been made in restoring peace and prosperity to that unfortunate nation. I cannot make these claims however. Violations of human rights continue, people are murdered or abducted or otherwise abused by terrorists of right-wing and left-wing groups or common criminals, and, at times, by members of El Salvador's security and military forces.

The new government, like the previous government of President Duarte, remains under siege Salvadoran society is gravely ill. The country's judicial system, generally ineffective since the 1970's, now—burdened by threats and intimidation—barely functions. El Salvador's promising industrial plants have reduced their activity, and land lies fallow because its agricultural population fears to work the soil. Concerted attacks by Marxist-Leninist insurgents have destroyed large parts of the country's public utilities and transportation system. Unemployment and economic distress afflict the Salvadoran people. Two hundred thousand people are internally displaced and survive only through the efforts of the government, which tries, despite great obstacles, to provide for their precarious welfare. Tens of thousands have fled to neighboring countries.

This is an extremely bleak picture, but it is not the complete picture. To understand where things stand today in El Salvador, we must also examine where El Salvador has been, and where it is going. Three years ago, El Salvador had a government that came to power through probable fraud, which did not represent the will of the Salvadoran people, and from which the majority of the population was alienated. There is now a government in El Salvador that has come into power as a result of a fair, honest, national election, in which the overwhelming majority of the electorate freely participated. Three years ago, the government of El Salvador served an oligarchy that controlled the vast majority of productive agricultural land as well as the means of finance and credit. Now, almost 20 percent of El Salvador's arable land has been distributed to its tillers and the banking systems has been nationalized.

While violence has been endemic in El Salvador's history, 2 years ago political killings may have been at an all-time high. Political violence is always difficult to quantify. But a decline seems to have occurred over the past year. During the last 6 months, this trend has continued. As the certification states a significant number of security force personnel has been disciplined for abuses. Five suspected killers of the four American churchwomen have been officially charged with murder. The case against these individuals continues and we fully expect they will be brought to trial. Of course, we have not seen all the progress we would like to have seen concerning control of violence, but the signs have been positive. Not only do Embassy reports show this trend, but other monitoring groups, regardless of political orientation, show a similar trend.

Moreover, and more importantly, on March 28 the Salvadoran people went to the polls and experienced an historical event unique in their troubled and violent history. They participated in a free and honest election that brought them the government they collectively desired. Almost 1.5 million people voted, probably over 80 percent of the eligible electorate.

The people frequently voted under tremendously difficult conditions. The leadership of the Marxist guerrillas decided to conduct a concerted and bloody cam-

paign to prevent the exercise of the popular will. Guerrillas blew up scores of buses during the 2 weeks before the election, sought to prevent distribution of gasoline to the eastern part of the country, and threatened to kill any bus or truck drivers who were so bold as to carry voters to the polls. The guerrillas attacked polling places and the Electoral Commission's headquarters, and increased bombings of electrical power installations. Guerrilla radio stations ordered voters to stay home, and threatened, through letters, printed propaganda, and wall slogans to kill or mutilate any voter who exercised his rights on election day. Guerrillas controlled the streets of the departmental capital of Usulutan and prevented voting in that city. Still, despite all obstacles, the Salvadoran people went to the polls in numbers that surprised the experts. Because of guerrilla violence, voters often walked miles to safer polling places or waited in line under fire for the chance to make their choice for El Salvador's future. This popular reaction constituted a rejection of the guerrilla attempt to prevent the election. Of the 1.5 million Salvadorans who voted, more than 88 percent cast their ballots for one of the six participating parties. Everyone now knows that the Christian Democratic Party received the largest single percentage—40 percent—of the vote, with the five parties to its right receiving the collective majority. As a result of agreement between El Salvador's political parties, a Government of National Unity was formed, and the Constituent Assembly chose as Provisional President the independent and highly respected banking expert, Alvaro Magana. Three Provisional Vice Presidents, representing the three largest parties, were also chosen. It is President Magana's freely elected government that must now face the threat of violent overthrow by well-armed, externally supported Marxist guerrillas.

The election has been attacked. Given the highly charged political atmosphere in El Salvador and persistent misperceptions about events in that country, criticism was to be expected. Such criticism that has arisen, however, with charges of massive fraud and inflated voting, is entirely unfounded, and recognized as such by serious observers of the situation in El Salvador. Jose Napoleon Duarte, who did not retain office as a result of the vote, has stated that these allegations are part of a campaign to denigrate the elections, and are false. International observers were invited to monitor the campaign and election. More than 200 observers from more than 40 countries were present and more than 700 journalists served as de facto observers as well. These observers uniformly found that the electoral process was orderly and, except for the guerrilla attacks I mentioned previously, peaceful. While charges of government pressure have been made, Msgr. Rivera y Damas, acting Archbishop, remarked of the voting that, "If there was any pressure, it was not from the government but from those who did not want the elections." While there were technical difficulties, as might have been expected, there was absolutely no indication of fraud. When we would like to see free elections in so many countries that do not have them, it is unfortunate to see the first free election denigrated or minimized for political reasons.

The results of the election are significant in many ways. They show that the vast majority of the Salvadoran people desperately want peace, and rejects the violent alternatives offered by the Marxist-Leninist insurgents. The election also shows that the Salvadoran people have taken the first step to integrate themselves into a political system, in which they have not previously had a chance to participate significantly. The results of the election indicate that the vast majority of the Salvadoran people believe that an elected government offers the best possible hope for greater respect for basic human rights.

Respect for human rights has been at the core of our policy toward El Salvador for some time, and intensely so during the past 6 months. Our concerns for human rights have been repeatedly stressed to Salvadoran officials, both military and civilian. Our policy toward El Salvador has been formulated in such a way as to seek tangible positive changes in human rights practices in El Salvador. We are working for meaningful structural changes, not simply cosmetic rearrangement or just resolution of individual cases. Respect for human rights and proper conduct toward the civilian population has been a principal part of our training of Salvadoran military personnel. Salvadoran leaders have been receptive to our concerns and agree with our basic objectives.

One can justifiably ask why progress has been so slow, and why things have not more markedly improved in El Salvador over the last 6 months—if a major power like the United States has brought all its efforts to bear, and if the leadership of El Salvador has been so receptive to our concerns. I believe I was able to discover the answer during my recent trip to that country. I am frankly surprised, after my visit, not that progress has been so slow, but that the Sal-

vadorans have moved as far as they have. El Salvador is desperately poor. The gross national product has declined by at least 25 percent in the last 2 years, due to the insurgency. Population growth is 3.5 percent per year in an already overpopulated land. There is no way of financing any number of necessary projects. Land reform is resisted, in part because owners have not received compensation for their losses. Statistical information is unreliable or unavailable. Road travel is extremely hazardous. The judicial system, never strong, has broken down. Judges and legal officials are regularly intimidated. Very few of us would have the courage to stand up to the threats that have been made against the safety of judicial officials and their families.

Communications within the country are extremely poor. A typical National Guard post, for example, consists of 10 to 15 men, under the command of a poorly educated corporal or sub-sergeant, stationed in a village somewhere in rural El Salvador. There is no telephone communication with national headquarters, sometimes no radio contact with even the commander of the department in which they are stationed. If their noncom is conscientious, they will patrol on foot, with no support from any other unit, and beyond any kind of control or regulation except that of their unit leader. If the noncom is a decent man, perhaps his men will enjoy good relations with the people of the area they patrol. But in an atmosphere of guerrilla threats and violence, abuses occur. Adequate means of redress for the victims are virtually nonexistent, since the unit is effectively a power unto itself. This is the kind of situation we are trying to change on the government side.

There has been no tradition of taking prisoners during the fighting in El Salvador. The government has several hundred prisoners captured off the battlefield and the guerrillas have about 40. Both sides have killed opposing combatants and quarter is rarely given or expected. As might be expected, the prisoner issue remains one of our most important areas of concern on the government side.

All in all, given El Salvador's violent tradition and bitter internal divisions, conditions for seeking human rights improvements could hardly be worse.

Accordingly, the struggle to achieve progress in El Salvador's human rights situation has been an uphill one for both the previous government and the current administration under President Magana, which is definitely committed to respect human rights. Progress has been measured in inches, not miles; and more importantly, in the lives and physical integrity of individuals who in the past would have suffered, but for the decision by responsible Salvadoran officials to work for a change in the way the security and military forces treat the civilian population. We have seen no similar effort on the part of the guerrillas.

I must return to one of the points I made when I testified before the Congress last winter: how can the United States effectively work for lasting improvements in respect to democracy, human rights, and reform in El Salvador? Were we—were you in the Congress—to terminate our security assistance to this beleaguered government, we would greatly reduce our ability to work to restrain those narrow and often brutal elements who want to see not even a return to the *status quo ante*, but further retrogression into repression and violence. A vacuum left by our termination of security assistance would lead to acceleration of the insurgency and consequent violent backlash. It is certainly possible that after such a prolonged bloodbath, those forces that want to impose a totalitarian Marxist-Leninist system would, after further struggle, take power. Let us make no mistake about the nature of the insurgents in El Salvador. They are as violent a group of men and women as any we have seen in the Western Hemisphere. It is bad enough that they see as their means to victory the destruction of factories, power systems, bridges, roads, and buses—that is, the creation of economic hardship for the people of El Salvador. It is worse that they destroy lives, nurturing violence and assassinating those who would oppose them. Their hostility to the efforts of the people of El Salvador to exercise their right to vote is a matter of record.

The leaders of the FMLN do not offer a viable alternative in El Salvador. Their assumption of power by force in El Salvador would only lead to dictatorship and increased misery and death. The vast majority of the Salvadoran people reject this possibility. What they have now is a government, freely elected, committed to democratic reform, including further free elections, and attempting, under incredible provocations, to make significant improvements in the human rights situation in their country. President Magana has stated that the goals of his government are pacification, democratization, restoration of confidence and security, economic recuperation, and respect for human rights. In the midst of

a cruel civil conflict and within a short time span since the elections, he has moved his government in those directions.

On April 15, I visited Fort Benning to observe the training of Salvadoran Army cadets, young men who now are fighting and dying for their country's freedom. We had undertaken to train almost 500 of these cadets for an army that is critically short of trained officers. The number of trainees was almost ten times the number of men who would graduate from El Salvador's military academy this year. They were young, bright, eager, and receptive to their American instructors' emphasis on the need to respect and protect the civilian population—as their brothers in arms had done over 2 weeks earlier, defending the voters and the electoral process against insurgent attacks. We hope they will have a tremendously positive impact on their army's performance not only in battle, but also in their response to the needs of the civilian population. If we refuse in the future to undertake such efforts, we will be committing a blunder of immense proportions. We must assist the Government of El Salvador to continue those steps it has taken to broaden popular support and eliminate abuses. If we do not, we will not only imperil our own national security over the long term, but we will help to condemn the Salvadoran people to a nightmare more frightening than the one they are now experiencing—and from which it will be hard to awake.

I said at the outset of this statement that to understand where El Salvador is today, we must consider where it has been, and where it is going. I think that, thanks in large part to the beginning made by the March 28 elections, El Salvador is moving ahead toward a democratic system of accountable government, which will create the conditions necessary for increasing respect for human rights, including free elections, a functioning judiciary, due process, improved discipline and greater professionalism in the military. These efforts are supported by the Salvadoran Armed Forces, who are playing a very constructive role in encouraging and protecting a very new democratic system. Democracy is the central issue in El Salvador. Its strengthening will lead to a further reduction of human rights violations. The current government in El Salvador must be given the opportunity to complete what it has begun.

Thank you.

The CHAIRMAN. Thank you very much, Secretary Abrams.

General Nutting, we would be happy to have any statement from you, and your complete statement will be incorporated into the record.

STATEMENT OF LT. GEN. WALLACE H. NUTTING, USA, COMMANDER IN CHIEF, U.S. SOUTHERN COMMAND

General NUTTING. Thank you, Mr. Chairman. I am pleased to respond to your interest in the current situation in Latin America, specifically in El Salvador. I am anxious to be of assistance in your deliberations on this issue, which I believe are vital and relevant to our own national security.

Permit me first to describe briefly the command I represent, the U.S. Southern Command, with headquarters in Panama, one of the four unified military area commands maintained by the United States throughout the world. We have relatively modest Army, Navy, Air Force, and Marine Corps forces in this command, whose mission historically has been dedicated to the security of the Panama Canal. We are responsible also for the development and maintenance of positive military relationships between the Armed Forces of the United States and the armed forces of the various nations of Latin America.

We are always ready to accomplish a variety of operational or humanitarian missions, and have a record of impressive accomplishments over the years. My command historically also has monitored the U.S. security assistance program throughout Latin America and today operates in that capacity through small military liaison offices located in some 20 capitals in Central and South America and the islands of the Caribbean.

One of these capitals is, of course, San Salvador, which brings us to the critical debate which confronts our Nation today. My own estimate of the situation in El Salvador is based upon the historic choices which confront us and reveals some encouragement in the progress achieved under most difficult circumstances.

I believe that the Government of El Salvador is improving its control over elements of its armed forces, though not as rapidly as we would wish, and that U.S. security assistance is making a positive contribution. Certainly, left to its own resources, no government in Central America can cope today with or successfully resist the aggression that is unfolding there.

Significantly, the people of El Salvador have consistently refused to support the guerrillas. On March 28 of this year, almost 1.5 million people did exercise their right to vote, which dealt a substantial blow to the insurgent credibility and prestige, while protesting continued violence and demonstrating massive popular support for the democratic process.

At the same time, the military effectively permitted and protected this process against insurgent disruption by force of arms. Nevertheless, the Salvadoran economy is in shambles as a result of the guerrilla assault, and all signs of economic deterioration are evident.

The threat to the well-being of the people and the survival of the Government of El Salvador is multidimensional, and the only means by which this insurgency can be defeated or turned back is to counterattack on all fronts simultaneously: the economic, political, social, and military. No single effort will succeed.

In fighting what I believe Assistant Secretary Enders has accurately called this covert war, the armed forces of El Salvador has demonstrated a number of strengths. They have consistently enjoyed relative popular support and have experienced no problems obtaining recruits among the population, nor have they experienced any significant desertion problems.

The officer corps, whose ranks have been seriously depleted, exhibit commendable dedication to social change and reform. In many cases, they are learning that conditions, not Communists, make insurgency possible. Salvadoran soldiers are rugged individuals and have continually exhibited high morale. As trainees, our experience indicates that they are highly motivated and anxious to learn.

To be sure, the El Salvador Armed Forces have experienced and exhibited a number of problems, not surprisingly. Their most serious challenge is the production of trained leadership and the development of a trained manpower base upon which to build an armed force capable of restoring and maintaining public order and security in the country.

In the functional areas of military operations they have faced deficiencies in command and control, tactical intelligence, tactical mobility, and logistics. Most assuredly, the control of violence and the application of force during security operations have posed a serious problem and the fact that violence is by now a cultural and societal problem really does not diminish the seriousness of the problem even in a military sense. It is necessary periodically to review performance, as has been done in this certification process on El Salvador.

I will not repeat all of the points made in the certification letter

itself. But I would summarize those that I think are pertinent to the military's performance.

It is appropriate to realize and recall that the military institution itself made an historic commitment on the 15th of October 1979 to support social change and reform. That commitment has been renewed periodically and continues.

On the 10th of March Defense Minister Garcia issued instructions to all military personnel to cease illegal actions and violations of the rights of citizens and ordered punishment for those who failed to heed the order. He insured that officers are aware that they are responsible for the actions of their men and for insuring discipline. During the March elections the military was ordered to maintain strict neutrality and not to vote. There were no reports of intimidation by the military as they protected polling places and defended the transportation system against armed attack by the guerrillas.

The armed forces suffered their heaviest casualties during the election period. With support of the military, President Magana and the Government of National Unity have put the land reform back on track, insuring the issuance of the provisional titles and reinstating illegally evicted beneficiaries.

There has been no evidence to support periodic guerrilla allegations of large-scale massacres allegedly committed by government forces. In the conduct of military operations we have seen improvement both by leadership, and the troops. On occasion we have received indications of improved performance as a result of our training assistance. As the tempo and extent of security operations have increased, there is evidence of a continued reduction in overall levels of violence. Progress is being made toward achievement of the Government goals enunciated in June by President Magana.

Our security assistance to El Salvador has focused primarily on the acquisition of material and the provision of critically needed training, which will have a positive effect by improving the securty situation, protecting the economic infrastructure and supporting the Government's consolidation and continuation of the moderate, progressive political progress begun in October 1979.

Our expenditures for training have varied between 10 and 20 percent of the total dollars allocated for security assistance in El Salvador. In fiscal year 1981 we helped train roughly 1,700 members of the Army, Navy, and Air Force in the United States, our military schools in Panama, and in El Salvador, with a total of 24 small mobile training teams. In fiscal year 1982, thus far we have helped train almost 3,600 members of the Army, Navy, and Air Force in the United States in our military schools in Panama, and with 33 mobile training teams in El Salvador.

The training subject matter has run the gamut of prefessional and technical military activities. Our training emphasizes a leadership focus on human fights and professional responsibility. We continually stress matters of military and citizenship importance to include the treatment of captured combatants and protection of noncombatants in countering guerrilla warfare. In this connection, about 11 percent of the officer cadet program of instruction at Fort Benning earlier this year and about 18 percent of the infantry battalion program of instruction at Fort Bragg were devoted to internal defense and development matters and discipline.

Since our law prohibits training assistance to police forces, our military training assistance has been received only by the Army, Navy, and Air Force regular forces. In 1981 our efforts therefore were focused only on about 12 percent of the regular forces of El Salvador or about 7 percent of the total force if you include public security forces.

The CHAIRMAN. General Nutting, would you mind an interruption for an assessment of where we stand? The chairman has canceled the chairman's meeting. We have, beginning at 11 o'clock, five back-to-back votes, 15 minutes on the first one and 10 minutes on the succeeding one. That will take 1 hour. We could either recess for 1 hour and then come back, or we could try to alternate. My decision would be to try to alternate our questions so that we could keep the continuity of the hearing going.

It would be necessary, however, to do that so that we can rotate back and forth, and Senator Helms could probably begin the questioning at 11 o'clock or shortly thereafter. If you could possibly summarize your comments in, say, 4 or 5 minutes, the full statement will be incorporated, and we would appreciate that very much because you do have a fairly long testimony which might cause us problems in scheduling. Thank you.

General NUTTING. Thank you, Mr. Chairman. I will attempt to summarize.

In this first portion I have tried to put into perspective our military training assistance, which really has been modest in terms of the number of Salvadorans trained in relationship to the whole force. And, of course, we have not had any training contact with the public security forces which, in many cases, we know are causing some of the problems.

But I do support the judgment that progress has been made overall. And, in fact, in terms of the military side of operations, we recently are beginning to see encouraging signs of increased professional performance, and we hope that will continue.

I had hoped to put into perspective events in El Salvador itself. And I shall do that in summary form.

I do believe that the dynamics in Latin America today are symptomatic of problems faced around the world. There has been, in fact, a revolution underway since the 15th of October 1979. And in the broadest terms, I think this movement needs to be recognized. And the dynamics of the situation dictate to me the inclusion of Latin America in the strategic calculus of the United States, perhaps for the first time in our history.

Over the years, especially since 1962, I believe there has been an unprecedented intrusion into o[illegible]hemisphere. I believe it is an intrusion that can be easily defined in political terms, in economic terms, and in psychological terms. And it is the psychological intrusion that perhaps is of greatest concern.

I will not dwell on those elements of the intrusion into the hemisphere, but I would like to say a bit about the military side of the intrusion.

Over the last 20 years there has evolved in the Caribbean Basin a conventional and an unconventional ideologically motivated military capability that is totally unprecedented. It is visible in the large, well-equipped regular and militia land, sea, and air forces of Cuba. It is

also visible in the large and growing regular and militia forces of Nicaragua. It is rarely visible in some of the surreptitious unconventional forces of Cuba. It is also less visible but highly destructive in the various paramilitary guerrilla organizations, each normally with its own political front, that exists in the various nations of Central America.

The picture of this unprecedented military intrusion is not complete unless you consider the potential military base structure that has been evolving in the Caribbean Basin, which includes principally the island of Cuba, a rather sophisticated and well-developed land, sea, and air base of some 20 years building.

Similarly, Nicaragua now provides a parallel potential for a substantial military base complex on the mainland. But the complex potential also includes the island of Grenada where air and sea facilities are under construction.

The base potential itself must be viewed also in terms of the very dynamic development over the last 10 or 15 years of the Soviet global power projection capabilities. The total military potential has to be considered both in military and psychological terms, because it does relate to and stand behind the guerrilla forces in Central America.

In the face of this challenge, I view our military efforts as an essential element in the restoration of order, clearly in a supportive way, so that political democracy and economic development are permitted to take place. In this regard, the President's Caribbean Basin Initiative and continued security assistance are indispensable.

There is, as I say, a revolution underway in Latin America and perhaps the real revolution relates to military institutions which for the first time in history are standing aside, supporting free elections, and then supporting civilian governments elected by the people. This process is visible in the election in Peru in 1980, where a military government after 12 years stood aside and now supports the civilian government.

The process was repeated in Honduras last year and more recently in the Dominican Republic; and other elections of similar importance are visible in Ecuador, Jamaica, and in El Salvador itself. It is, I believe, correct to say that overall in the region, democracy has been strengthened. It is a process that seems agreeable to me in terms of our own value system and goals and objectives. It is a process which deserves our support. Thank you, Mr. Chairman.

[General Nutting's prepared statement follows:]

PREPARED STATEMENT OF LT. GEN. WALLACE H. NUTTING

Mr. Chairman, Members of the Committee: I am pleased to respond to your interest in the current situation in Latin America, specifically the situation in El Salvador. I am anxious to be of assistance in your deliberations on this issue which I believe are vital and relevant to our own national security.

Permit me first to describe briefly the command I represent, the United States Southern Command with headquarters in Panama, one of the four unified, military area commands maintained by the United States throughout the world. We have relatively modest Army, Navy, Air Force, and Marine Corps forces in this command whose mission historically has been dedicated to the security of the Panama Canal. We are responsible also for the development and the maintenance of positive military relations between the Armed Forces of the United States and the armed forces of the various nations of Latin America. We are always ready to accomplish a variety of operational or humanitarian missions and have a rather impressive record of accomplishment over the years.

My command historically also has monitored the U.S. security assistance program throughout Latin America and today operates in that capacity through small military liaison offices located in some 20 capitals in Central and South America, and the islands of the Caribbean. One of these capitals is, of course, San Salvador which brings us to the critical debate which confronts our nation today. My own estimate of the situation in El Salvador is based on the stark choices which confront us and reveals some encouragement in the progress achieved under most difficult circumstances. I believe that the government is improving its control over elements of its own armed forces—though not as rapidly as we would wish, and that U.S. assistance is making a positive contribution. Certainly, left to its own resources, no government in Central America can cope with or successfully resist the aggression unfolding there today. Significantly, the people of El Salvador have consistently refused to support the guerrillas. On March 28, 1½ million people exercised their right to vote, dealing a substantial blow to insurgent credibility and prestige, while protecting continued violence and demonstrating massive popular support for the democratic process. At the same time, the military effectively permitted and protected this process against insurgent disruption by force of arms. Nevertheless, the Salvadoran economy is in shambles as a result of guerrilla assault and all the signs of economic deterioration are evident. The threat to the well-being of the people and the survival of the Government of El Salvador is multi-dimensional and the only means by which this insurgency can be defeated is to counterattack on all fronts simultaneously—the economic, political, social, and military. No single effort alone will succeed.

In fighting what Assistant Secretary Enders has accurately called this covert war, the armed force of El Salvador has demonstrated a number of strengths. They have consistently enjoyed relative popular support and have experienced no problems obtaining recruits, nor have they experienced any significant desertion problems. The officer corps, whose ranks have been seriously depleted, exhibit commendable dedication to social change and reform. In many cases they are learning that conditions, not Communists, make insurgency possible. Salvadoran soldiers are rugged individuals and have continually exhibited high morale. As trainees our experience indicates that they are highly motivated and anxious to learn.

To be sure, the El Salvador armed force has experienced and exhibited a number of problems, not surprisingly. Their most serious challenge is the production of trained leadership and the development of a trained manpower base upon which to build an armed force capable of restoring and maintaining public order and security in the country. In the functional areas of military operations, they have faced deficiencies in command and control, tactical intelligence, tactical mobility, and logistics. Most assuredly, the control of violence in the application of force during security operations has posed a serious problem and the fact that violence is by now a cultural and societal problem does not diminish the seriousness of the problem.

It is necessary periodically to review performance, as has been done in the certification on El Salvador.

The military institution made an historic commitment on October 15, 1979, to support social change and reform. That commitment has been renewed periodically and continues.

Since October 15, 1979, at least 1,000 members of the security forces have been disciplined for abuse of authority and turned over to civil courts for prosecution.

During the certification period, 109 members of the El Salvador armed force were disciplined for various offenses of which 56 were submitted for judicial action. At least 20 members of the civil defense forces were disciplined as part of a special effort to crack down on abuse by the para-military force.

Our Embassy confirms that since January 1, 1982, 47 military and at least 10 civil defense members have been arrested and confined for violent abuse of authority. Of these, 20 were arrested for murder.

On March 10, 1982, Defense Minister Garcia issued instructions to all military personnel to cease illegal actions and violations of the rights of citizens and ordered punishment for those who failed to heed the order. He insured that officers are aware that they are responsible for the actions of their men and for insuring discipline.

During the March elections, the military was ordered to maintain strict neutrality and not to vote. There were no reports of intimidation by the military as they protected polling places and defended the transportation system against armed attacks by the guerrillas. They suffered their heaviest casualties during the elections.

With support of the military, President Magana and the government of national unity put land reform programs back on track insuring issuance of provisional titles and reinstating illegally evicted beneficiaries.

The national police recently redrafted a guide for counter-insurgency procedures which highlighted the defensive use of arms, rules and engagement, and respect for human rights. Regular indoctrination classes are held and the ICRC conducts instruction on the Geneva Convention.

There has been no evidence to support periodic guerrilla allegations of large scale massacres allegedly committed by Government forces.

In the conduct of military operations, we have seen improvement by both the leadership and troops. On occasion we have received indications of improved performance as a result of our training assistance.

As the tempo and extent of security operations have increased, there is evidence of a continued reduction in overall levels of violence. Progress is being made toward achievement of the Government goals as enunciated on June 4 by President Magana : Pacification, democratization, confidence and security, economic recuperation, reforms, and respect for human rights.

Our security assistance to El Salvador has focused primarily on the acquisition of material and the provision of critically needed training which will have a positive effect by improving the security situation, protectng the economic infrastructure, and supporting the Government's consolidation and continuation of the moderate, progressive political process begun in October 1979.

Our expenditures for training have varied between 10 and 20 percent of the total for security assistance. In fiscal year 1981, we helped train about 1,700 members of the Army, Navy and Air Force in the United States, our military schools in Panama, and in El Salvador with 24 mobile training teams. In fiscal year 1982, thus far we have helped train almost 3,600 members of the Army, Navy and Air Force in the United States, our military schools in Panama, and with 33 mobile training teams in El Salvador

The training subject matter has run the gamut of professional and technical military activities. Our training emphasizes a leadership focus on human rights and professional responsibility. We continually stress matters of military and citizenship importance to include the treatment of captured combatants and protection of noncombatants in countering guerrilla warfare. In this connection, about 11 percent of the cadet program of instruction at Fort Benning and about 18 percent of the infantry battalion program of instruction at Fort Bragg were devoted to internal defense and development matters and discipline.

Since our law prohibits training assistance to police forces, our military training assistance has been received by the regular Army, Navy, and Air Force only. In 1981 our efforts therefore were focused only on about 12 percent of the regular forces, or about 7 percent of the total forces including public security forces. Similarly, in 1982 we had a training impact on only about 19 percent of the regular forces, or about 12 percent of the total forces.

Because of the nature of military requirements, the El Salvador armed force has been limited in institutional training activities. Thus far our assistance has enabled the reestablishment of important training programs.

We have noted significant accomplishment in expansion of the trained manpower base and in the conduct of operations in military functional areas. However, the return in mid-May of the officer cadets and the infantry battalion from training in the United States has given us insufficient opportunity to develop compelling evidence on the quality of our performance.

The rules of engagement under which our personnel in El Salvador operate give us limited operations feedback and opportunity for training effectiveness evaluation.

Having summarily addressed what I believe is your specific interest in the situation in El Salvador, I consider it essential to establish a broader, at least regional perspective. Only in so doing can we fully appreciate the critical nature of events as they impact on our interests in El Salvador and as they relate to regional trends of importance. I believe, too, it goes without saying that we exist in a period of global competitive coexistence quite unparalleled in history.

The dynamics of Latin America today are symptomatic of a broad and fundamental challenge faced throughout the world. Rising expectations and human dissatisfaction continue to heighten the rift between the privileged and underprivileged. When confrontation occurs, some military institutions are forced to balance the traditional duty of preserving the established order

against their social conscience which dictates support and protection for needed reform. In El Salvador, this struggle reached a crisis point on October 15, 1979, when the Romero Government was replaced in a truly revolutionary move by an evolving civil-military government which instituted and continues to support a series of sweeping reforms. The Russians and the Cubans did not create these deplorable conditions, and indigenous revolution might be in progress anyway. Yet this situation is opportunistically and increasingly exploited by a regionally, and in some cases globally, coordinated Soviet/Cuban-backed program of material, psychological, political and ideological support. Nevertheless, there is a broad and encouraging trend visible in Latin America which deserves our support.

In the broadest terms, dynamics in the hemisphere today, for the first time in our history, dictate that Latin America enter the strategic calculus of the United States. Our level of interest in and attention to Latin America have varied widely over the years. At times, when we felt our security threatened, we have invested significant amounts of our national wealth—but always a very small portion of our worldwide aid. Such a period has normally been followed by periods of neglect, based upon loss of interest or the belief that the problem was solved and the resources would be better spent elsewhere. To provide you a measure of our interest, note that since World War II, the United States has provided a total of almost $200 billion in economic and military aid worldwide. Much less than 1 percent has gone to Latin America. In recent years, Latin America has received less than 2 percent of our worldwide foreign military sales credits. The Alliance for Progress and the Cuban missile crisis of the early 1960's mark the last period of peak interest.

Now, we are once again embarking upon a mending of our southern security fences which are in serious disrepair. Events in the hemisphere are impacting directly and significantly on the security of the United States itself and are potentially capable of affecting our ability to take those actions we consider necessary in other parts of the world. I believe that the sophistication and potential of the current threat to U.S. hemispheric security are unprecedented. A hostile, Marxist government controls Cuba and another has been established on the mainland of Central America.

Over the years, especially since 1962. I believe we have witnessed an unprecedented intrusion into the Western Hemisphere, it is a multi-dimensional instrusion across the spectrum of national and international power elements—it is much more than military. I will not dwell on the political and economic aspects of this intrusion today, though they are real, they are identifiable, and they are of sufficient importance as to warrant our recognition. Nor will I dwell on the psychological aspects of this intrusion except to say that, in many respects, this may be the most serious element of challenge. Our values, our stature, indeed our security, are under continual attack by an aggressive, heavily resourced, and well coordinated campaign of propaganda and disinformation. The political, economic, and psychological elements of this intrusion are well coordinated along with the military element of the intrusion so as to gain a relatively high payoff in political terms. The intrusion would not be such a significant factor were it not for the imperfect socio-economic conditions which prevail in many areas. Our greatest challenge is to control or reverse the intrusion while we help improve these conditions.

In effect, over the last 20 years there has evolved in the Caribbean Basin a conventional and an unconventional, ideologically motivated, military capability that is totally unprecedented. The capability is visible in the large, well-equipped regular and militia land, sea, and air forces of Cuba. It is also visible in the large and growing regular and militia forces of Nicaragua. It is rarely visible in some of the surreptitious, unconventional forces of Cuba. It is also less visible but highly destructive in the various para-military guerrilla organizations, each normally with its political front, that exist in the various nations of Central America.

The picture of this unprecedented military intrusion is not complete unless you appreciate the potential military support base that has been developing in the Caribbean Basin—primarily in Cuba. It is composed of sophisticated and capable ground, sea, and air forces and base facilities which are capable of supporting substantial additional forces if someone should decide to put them there. Similarly, Nicaragua now provides a parallel potential for a substantial military base complex on mainland Central America. The potential base complex, however, also includes Grenada and the air and sea facilities under construction there. Additionally, one must acknowledge the tremendous effort made

by the Soviet Union over the last 20 years to develop its global power projection capabilities.

When these Soviet power projection capabilities are coupled to the potential support structure developing in the Caribbean Basin, we are faced with a totally new military challenge in our own hemisphere. It is a challenge of both military and psychological importance as it relates to and stands behind the guerrilla forces in Central America.

In the face of this challenge, I view our military efforts as an essential element in the restoration of order and public security without which political democracy and economic development cannot succeed. Our military effort is supportive of the political, social, and economic initiatives being taken to correct ultimately the root of the problem. The President's Caribbean Basin Initiative and continued security assistance are indispensable to this process.

In recent years, democracy has been strengthened in Latin America. In 1980, the military government and armed forces of Peru voluntarily permitted and facilitated a free election after 12 years of military rule and now support a popularly-elected civilian government. This process was repeated in Honduras in 1981 and last month in the Dominican Republic where a second evolution of the process took place. Other notable elections have occurred in Ecuador, Jamaica, Costa Rica—with its vital democratic tradition, Colombia, and especially in El Salvador itself in March. In fact, the real revolution in Latin America involves reform-minded military institutions who are now supporting social change and reform. They are yet imperfect and have many faults—but the process conforms to our values and ideals and deserves our support. To be sure, there is no easy, quick, cheap solution to the problem!

Indeed, our own security depends upon continued involvement. There are two processes at work in Central America. One is the struggle against poverty which seeks freedom and justice. This alternative involves a slow, frustrating evolutionary improvement to some form of democracy and is now well underway. The second process involves destructive, Marxist-driven "revolution." If allowed to succeed, it will result predictably in the installation of Marxist governments in the rest of Central America. I think the American people want the former process to succeed, but, if so, they must understand the choices and have the will to persist.

Thank you, Mr. Chairman. I am ready to respond to your (any additional) questions.

The CHAIRMAN. Thank you very much, General.

We will proceed on the 10-minute rule and will do the best we can to rotate back and forth and see if that will keep our continuity going. Those of us who miss other Senators' questions can read the record on those.

I would like to first ask Secretary Enders about some of his statements where he pointed out the fact that a few hundred wealthy families owned most of the best land in El Salvador some years ago, that the army and the military now spearhead land reforms and support constitutional democracy, which is certainly progress. But a problem came up after the election, when certainly Senator Kassebaum came back with a very strong statement about not backing out on all of the pledges that had been made and that the outpouring of people came as a result of the pledges of all of the parties to continue these reform programs.

Immediately after the election, you say, there was a concerted effort to derail land reform, a self-destructive provision in the country whose economy was already devastated by sabotage. And the new Government sent out massive political signals to the country that the reforms has been suspended, evictions of peasants surged, and new title applications stopped.

At that point, as I recall, there were strong signals from the administration and strong signals from this committee that the continued

support of the American people, the Congress, and the administration clearly depended upon those reforms continuing. That had been the understanding of every single party as they ran for election.

From all of the intelligence reports that you have seen and from your own personal observations, is it true that there was a counterattack then? The foreign minister came to this country, he spent days with us; the peasant representatives came up to talk to us then. Was the action of the administration and the Congress and this committee and the statements that were made at that time effective in sending the message to the Government of El Salvador that they could not betray a program that was the foundation, we feel, of future stability in the country?

Ambassador ENDERS. I think there are two things here, Mr. Chairman. One is that there are a lot of people in the Government of El Salvador and in the armed forces of El Salvador who are committed to carrying this program through. It was originated under the reforming government that came to power 3 years ago. And there are many people in the present coalition government that are deeply committed to it.

I note, for example, that President Magana has personally handed out a large number of titles in the last 2 months, over 750 in June and 850 in July. The deputy minister of defense was shot down in a helicopter and taken prisoner coming back from a distribution of provisional titles over 6 weeks ago. Army officers throughout the country are participating in it vigorously.

And the interest of those people combined with the stimulus and the strong position taken up here I think have resulted in the relaunching of the land reform.

I wanted to point out in my statement that there are a lot of difficulties to overcome in this land reform, and that land reforms are always very difficult to carry through. And there is a struggle going on over the possession of the land, as you would expect in a land-short country like that. And a great deal more will be needed on our part and on their part to carry it through.

But I would agree with you, I think that the coming together of a clear position from this side and support from within the Salvadoran Government has set this back on track.

The CHAIRMAN. Thank you very much.

Secretary Abrams, last Thursday's New York Times carried an op-ed piece by you which questioned whether Congress examines the right issues when it considers the administration's certification of progress by the Salvadoran Government in human rights. You asked the key question this way: Would a cutoff of American military aid curb human rights violations, or would it hurt our influence with the military and retard the training programs that we hope will produce more professional disciplined Salvadoran soldiers?

I would like to give both you and Secretary Enders the opportunity to answer that question since it is a part of the ongoing debate on aid to El Salvador. What would happen to the human rights situation in El Salvador if the United States ended its support for the Government? And under what circumstances would it be appropriate and necessary for the United States to cease providing aid to El Salvador because of human rights violations?

You may answer all of that in all of 2½ minutes, since we have to leave in about 3 minutes.

Mr. ABRAMS. Mr. Chairman, I think one way of describing what the United States is doing in El Salvador is supporting the center against violent extremists of various varieties. It seems clear to me that were the United States to withdraw its support from the center, by which I mean those who are attempting to reform Salvadoran society by peaceful means, then that whole society would once again get caught in and be characterized by nothing but a crossfire between those who would like to use violence and who are using violence for their purposes.

I think that is one of the major contributions that we make. I think that nothing really can be surer than that a pullout by the United States support would vastly increase the amount of violence in El Salvador. We recognize if the situation deteriorates and we cannot meet the terms of the certification, then we will have to say so, and we will. But this would, I think, be a tremendous tragedy, not simply for our national security interests but much more so for the people of El Salvador.

The CHAIRMAN. Thank you.

Secretary Enders, would you like to comment further?

Ambassador ENDERS. To put a finer point on it, Mr. Chairman, I think the rightwing in El Salvador would say, look, the policy of cooperation with the United States has failed, they let you down when you needed them the most, so let us try to do it our way. And I suspect that you would then find the country exposed to a rightwing coup with an effort to solve the insurgency by that means.

The CHAIRMAN. Thank you.

General Nutting, what is the human rights content of training given Salvadoran forces? What kind of results, and when should one expect this kind of training to really impact and take effect and show results?

General NUTTING. As I indicated, Mr. Chairman, there is somewhere between 10 and 20 percent of each program of instruction devoted to subject matter which can be considered focused on human rights, discipline, military discipline, and citizenship types of training. That is in the formal program of instruction.

In each of the training opportunities that we have, constant emphasis is placed in both formal and informal ways on the importance of proper treatment of combatants and noncombatants, recognizing that not only is it a moral imperative but in purely military operational terms, if they do not have the support of the population, they are unlikely to succeed in the long run. And I think we are achieving progress in developing that kind of appreciation.

I certainly am unable to forecast when 100 percent of their forces might be imbued with that spirit. I believe there is no easy, quick, cheap solution. I think we have made progress, but we are only working, as I have mentioned, with a small percentage of the total force. So under the terms that we are providing assistance now, I think it will take some period of time, years.

The CHAIRMAN. One last question. Six months from now, in January, we will be up for another certification. Secretary Enders, from what you have seen as trends, can you predict ahead of time what might be the results of that certification? And what areas do you feel the El

Salvadoran Government should concentrate on to show more progress than they have in the past?

Ambassador ENDERS. Well, what will happen in the next 6 months in El Salvador will depend, among other things, on the level of effort sustained from outside, the degree to which the Cubans and the Nicaraguans put arms in there and the strategy which is adopted.

I am hopeful that there will, in fact, be an increase once again, and I think it is essential in applications for phase III under the land reform, I think there should be a major target that we go for.

I think that little by little, the violence is lessening and that this is what, aside from the statistics and aside from judgments that can be made about them, this is really what our Embassy is reporting to us, is that comparatively, certainly the change is important when compared to what it was 2 years ago.

The CHAIRMAN. Secretary Enders, I am afraid I must interrupt you. We will continue this hearing just as soon as a Senator returns to the room. I would ask the staff to request that the first Senator to return resume this hearing. We have about 2 minutes left to make this vote.

[Brief recess.]

Senator KASSEBAUM [presiding]. The hearing will come back to order, please. We may succeed in spite of ourselves. This is certainly chaotic, and I offer you apologies from all of us as we try to continue forward.

I would like to say, Secretary Enders, that I thought the certification report sent forward—and I know you have had a great deal to do with the preparation and analysis of that report—was a very interesting and, I thought, a very fair and important certification report.

Ambassador ENDERS. Thank you, Senator.

Senator KASSEBAUM. Particularly your comments where you said for all of the problems there have been some gains and that it is a troubled and tragic country, and that as we sit here in the comforts that we have in Washington it is very hard to put all of these problems under a microscope and try and judge what indeed is the best answer. I thought as you made clear in analyzing both land reform and human rights, that there are problems that still lie ahead.

And, obviously, everyone agrees to that. But that in so saying, how do we interpret the best way to move forward at this particular time?

I was visiting with some campesino leaders yesterday who were in Washington and was interested to hear them say that they believed military assistance was more important than economic assistance at this time; that the military seems to be very supportive of the land reform program and has become a champion of those efforts at this time. I wonder how you view that, if indeed you view this as a positive step? Do you see this as an important relationship?

Ambassador ENDERS. I think it is an historic change in that country. The military was in the past very close to the landowners and to the self-perpetuating governments. And they have made a massive transition in the course of the last 3 years, to see the effort that is put into the land reform.

You were down in El Salvador, you know how complex it is. You go out to a countryside area and you find yourself in front of a group of angry people who are disputing whether or not someone rented a given plot of corn land 3 years ago. As you know, those contracts were made

98-270 0 - 82 - 3

each year about in April at the start of the planting season, and so there could be all kinds of contests and differences over them. And the army has played a key role in sorting them out and trying to do justice in that and trying to get the process moving forward. It is an historic change.

Senator KASSEBAUM. One of the concerns that I think was touched upon in the opening comments that were made this morning is the consistency of addressing problems there. Attention seemingly is paid only every 6 months as we prepare the report, when, of course, there is heightened interest.

I think this obviously is troubling to everyone: how we can establish some sort of consistency and persistence in determining that month by month and week by week the country is moving forward and that persistent attention is being paid to these problems rather than just highlighting them with the certification process.

Is this troubling to you?

Ambassador ENDERS. There are certain artificial aspects about the certification process, in that it does tend to bunch public attention every 5 months. It may lead people to make statements that are perhaps stronger than they would if they were making them during the certification period.

But we have been working on certification goals which are the goals of the administration policy throughout this period, and we think the Salvadoran Government has, too, and that obviously is the way to try to do it. We should simply recognize that it is somewhat artificial, but we are not at this point suggesting that they change the pattern.

Senator KASSEBAUM. General Nutting, I would like to ask you this. You say that in the second training phase, if I am correct, you worked with about 3,600 forces; is that correct?

General NUTTING. Senator, I indicated that so far in this fiscal year, beginning in October of last year, we have trained roughly about 3,500 or 3,600 for the Army, Navy, and Air Force.

Senator KASSEBAUM. Do you anticipate training any further?

General NUTTING. Yes. There is training under way today in El Salvador by about six separate mobile training teams. There are today a total of 39 military trainers there.

Senator KASSEBAUM. Thirty-nine of our personnel are working there?

General NUTTING. That is right. They are engaged in training. That involves some maintenance of equipment, security of installations. One training team is working specifically with the Air Force in improving their security practices. There is a Navy training team that is helping them upgrade their boats and the maintenance of their equipment. There is a helicopter logistic support team there, an operations planning team, and there is a team working with some basic recruit training.

We expect that that sort of training will continue as necessary, probably along the same level. We try to plan ahead and determine what requirements have been identified by the Government of El Salvador and, to the extent possible, respond to their requests for assistance.

I would emphasize that those 39 people are there in a training capacity only, transferring technical or professional military skills to other people. They are not advisers or acting in a capacity as advisers.

Senator KASSEBAUM. As you say, one of the real problems is, however, the public security forces, the treasury police and the national guard, that are operating outside of the control of armed services; by law we cannot train them. Does that apply—I assume it does—to the national guard as well?

General NUTTING. That is correct. We have had not training interchange with the national guard.

Senator KASSEBAUM. How many personnel do you estimate are involved in outside public security forces versus the armed services? Do you have any numbers on that?

General NUTTING. I would estimate—and this is a very rough estimate which would include the separate national guard, national police, and treasury police—must be in the neighborhood of 8,000 to 10,000 people.

Senator KASSEBAUM. And how many then are in the armed services?

General NUTTING. I cannot give you exact figures. That force has been expanding modestly over a period of time. I would guess it is probably somewhere in the neighborhood of 15,000 at this point. Of course, all of those are not soldiers who might engage in combat operations. That would include the entire force, somewhere in that area.

Senator KASSEBAUM. In the request for funds, the 1982 level was approximately $67 million. And the 1983 level would be approximately $160 million. This would be in ESF [economic support funds] as well as FMS [foreign military sales]. What do you envision would be the need for that increase? Where would that increase of funds go? Why do you believe it is that important to increase funding by that amount?

General NUTTING. Senator Kassebaum, the money, of course, would be divided between training assistance and material assistance. And I indicated that by far the smallest portion goes to training, probably annually somewhere between 10 and 20 percent of the total.

We believe that future training requirements will enter into the area of command and control, which will improve the ability of the government and the high command to extend discipline and control throughout the country, in the areas of tactical reconnaissance and intelligence which will help them perfect their ability to apply force with discrimination, because they have an imperfect tactical intelligence structure at this point.

There will be officer and NCO leadership kinds of training and that sort of thing.

Senator KASSEBAUM. Pardon me for interrupting just a minute.

Ambassador ENDERS. Senator Kassebaum, may I just add a point to that which is consistent with a remark you made? We are talking about $60 million worth of security assistance. The ESF comes out of the security assistance rubric, but it is, in effect, economic assistance. That is clear.

Senator KASSEBAUM. Well, it could be, or it could not be. I mean it is more or less "funding."

Ambassador ENDERS. Yes, but it is not funding to be spent for military hardware, military services or——

Senator KASSEBAUM. Could it be for training?

Ambassador ENDERS. No, it could not be training. In other words, it is grouped together, but it is purely economic. It has nothing to do with the actual military operations within the country, training of any type at all. I wanted to make that clear.

General NUTTING. [Nods affirmatively.]

Ambassador ENDERS. So the $60 million is actually down from the total that will be given this year.

Senator KASSEBAUM. I am sorry, I am going to have to go and vote now and will have to turn this over to Senator Pell.

General Nutting, let me just ask you this: Do not believe that the needs could be met under the $67 million, which was the 1982 level? I believe that you have spoken to some progress particularly in the training of the personnel and bringing some sense of structure and discipline there which was important.

General NUTTING. Yes. I believe, Senator, that any training that we provide in response to their request will be of assistance. It is really hard definitively to draw a line and say below this line they will not succeed.

The majority of the money, of course, is going for material items, and I believe with our continued assistance, even of modest amounts—it was, I think, a total of only about $1 million for mobile training kinds of instruction in Salvador last year—that we are making an impact in improving their performance.

Senator KASSEBAUM. Thank you very much.

The CHAIRMAN [presiding]. Thank you, Senator Kassebaum.

Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

I apologize for this on-again, off-again approach we have.

The CHAIRMAN. Have you made this present vote, by the way?

Senator PELL. Yes.

The CHAIRMAN. Fine.

Senator PELL. I would like to ask General Nutting one specific quesion with regard to the number of American military personnel in El Salvador and in Honduras. I realize the numbers fluctuate, but could you give us a range that would cover the number of people as a general rule in Honduras and in El Salvador who are under the command of the Secretary of Defense?

General NUTTING. Yes, Senator Pell. I would be happy to. Of course, I would say that any military personnel in Honduras or El Salvador are really under the direction of the Ambassador in that particular country.

Senator PELL. Right.

General NUTTING. And they respond to his direction. In the military chain of command they do respond to me, but it is one level removed. Today, in fact, in El Salvador there are a total of 45 U.S. military personnel. Six of those people are in the permanent military group. There is one additional noncommissioned officer there who is assisting them with administrative work in the security assistance program.

There are a total of 39 military trainers there, who are not in a position to advise but they are purely transferring technical and professional military skills. They are organized in a total of eight teams. Earlier I said six, but it is a total of eight small mobile training teams working.

Senator PELL. Without all the specifics, how many is the total, that is my question, in El Salvador?

General NUTTING. 45.

Senator PELL. 45.

General NUTTING. Total today.

Senator PELL. Total today.

Ambassador ENDERS. And the highest number we have had is 57, Senator Pell.

General NUTTING. The average on any day during the year has been somewhere between 25 and 30.

Senator PELL. Thank you. And what about in Honduras?

General NUTTING. In Honduras today we have underway a combined exercise between our forces and Honduras, and the total number of U.S. military people engaged in that exercise is 79. Now, beyond that, we have 5 in the military group, one administrative assistant, and a total of 34 others. So it is a total today during this exercise period of 119.

Senator PELL. That includes the people under the military attaché as well?

General NUTTING. I am not including the defense attachés in those totals. I am talking only of the military groups and trainers who are there.

Senator PELL. Let me include, if I may, the military attaché offices. In other words, how many people are drawing pay from the Defense Department in those two countries, is my question?

General NUTTING. I will have to give you an estimate. I think the strength of the attaché office in each case is 4 or 5 people, so it would be roughly a total of 50 in El Salvador and probably a total of about 124 in Honduras.

Senator PELL. Good. Thank you very much.

General NUTTING. Yes, Senator.

Senator PELL. I would like to ask Secretary Enders, if I could read to him a couple of sentences that we will be getting this afternoon from Michael Donovan, brother of Jean Donovan, one of the women who were killed.

He says:

> On Wednesday of last week we met with Assistant Secretary of State for Latin American Affairs Thomas Enders and members of his staff and a U.S. Embassy official at Mr. Enders' office. At that meeting we were told that the State Department now has reason to suspect the direct involvement of senior officers of the security forces and officials of the Salvadoran Government.
>
> We are told that specific information indicates that Lieutenant Daniel Mejia transmitted orders to Sergeant Luis Antonio Colindres Aleman, who is now under arrest, just prior to the commission of this crime by Colindres Aleman and his men. We were told that the State Department believes that these orders instructed Colindres Aleman to carry out the murders of the four women.
>
> It was additionally revealed to us that the State Department considers it highly unlikely that the orders transmitted to Colindres Aleman by Lieutenant Mejia originated with the lieutenant. Indeed he too was following orders from even higher levels.

I thought it would be good to bring this out now because you will not have an opportunity to respond this afternoon when Mr. Donovan presumably will be making this statement. What would be your reaction to that?

Ambassador ENDERS. I am surprised at the statement you have just read, Senator Pell, that that statement bears no resemblance whatsoever to any statements made by State Department representatives at that meeting or to the knowledge that we possess of the case. I would be glad to parse it and go into specifics, but it is totally at variance with our understanding of the case.

Senator PELL. And did I not read somewhere over the weekend—I cannot recall where—that Ambassador White had said that he thought evidence would be coming out at the hearing today to the effect that there was a line of command that had instructed the killers to do their job?

Ambassador ENDERS. I mentioned that a moment ago because we are unable to trace that document. We are not aware of the document that Ambassador White is referring to, and that we would very much like to see any evidence that anybody has. But we do not have the document he is referring to.

Senator PELL. All right. And in general, then, you feel that this statement by Mr. Donovan is simply not correct?

Ambassador ENDERS. Well, it does not correspond to statements made by the State Department at that meeting or to our understanding of the case.

Senator PELL. Thank you very much. Naturally, we will pursue that this afternoon so that he can submit his evidence, if he has any.

Ambassador ENDERS. Perhaps I could expand a little on this, Senator Pell. One of the issues in this case has been the making available of information that are contained in State Department files and Embassy files to the families. We have had a large number of requests, and we have, in fact, made a large number of documents available.

We have, however, I should note to you, sir, not made all documents available, and we have withheld some which concern confidential sources, and they are to protect their identity.

In fact, confidential sources have been at the heart of the progress that has been made in this case. And we are determined to make sure that their identity is not revealed in a way that would be prejudicial to them, and, in addition to that, information which, if it were to be made public, would perhaps jeopardize the pattern of cooperation that has been established with some elements of the El Salvador Government. We do not have evidence, Senator Pell, in our files of higher-up complicity. It is hard to prove a negative. But we do not have such evidence at the moment.

We have had, however, I might note, we have made available all our information to Chairman Barnes of the House Foreign Affairs Subcommittee, and we will continue to do so.

Senator PELL. Thank you. I would like to get to a basic point here, and that is, whether you believe it appropriate, when such a little bit of progress has been made, that that meets the requirements of the certification law? Because I think you will agree that while there has been improvement, the improvement has not been of a tremendously substantial nature. There have been two steps forward and one step backward taken in this regard.

Do you consider the figures low enough that you are using here are fully adequate for the purposes of the law?

Ambassador ENDERS. Senator Pell, I think it depends on your understanding of the certification process. And the basis of the hearings that we have had here and the process by which it was developed, our understanding was that it was designed by the Congress for use as a tool in achieving policy goals which are shared by the Congress and the administration.

We thought that in regard to those policy goals, one of which was the transformation of that country into a democracy, that a very major effort was made in the course of the last period, an unprecedentedly open and unrestrained election had taken place, we were able to point to what we have thought was a continuing slow trend toward less violence. But that slow trend has led us from very high levels of violence to much lower levels of violence, perhaps down one-half over the last 2 years. We thought that that was encouraging.

The land reform process is a complicated and difficult one. But when you have 10,000 more people with provisional titles than you had a half a year ago, we thought that that was significant, particularly since they are now beginning to move on it again, and so forth.

So these were common goals, and we thought we could show significant progress in each case. That does not mean that you think that the absolute standards that result from that are acceptable. We do not think that anymore than you do.

Senator PELL. What is the average rate of killings in the past month, for instance?

Ambassador ENDERS. They show a convergence down to a level of about 300, the separate statistics which are collected by different organizations. And for example, the last month for which we have our press reports show 300 in May.

The Socorro Juridico, which is the human rights organization that is sympathetic to the insurgents, used to be with the archdiocese, has been moved out as a result of the request of the archdiocese which has now disavowed it, is now with the Baptist Church, they report 375. Two other organizations report 269 and 334.

I would only point out to you, sir, that if you look at the beginning of 1981, those other organizations were reporting 2,000 deaths a month. We were reporting less. We were reporting 500 a month. That is a lot of violence, still, but it is a change.

The CHAIRMAN. Thank you very much.

Senator Helms, we will turn the Chair over to you, and I will request the floor to hold, but for 3 or 4 minutes possibly you can get started anyway.

Senator HELMS [presiding]. Very well. Thank you, Mr. Chairman.

Mr. Secretary, Mr. Secretary and General Nutting, look me in the eye now. Are we covering up anything in El Salvador?

Ambassador ENDERS. No, sir, we are not.

Mr. ABRAMS. [Nods negatively.]

General NUTTING. No, sir, we are not.

Senator HELMS. Were you at the meeting to which Senator Pell alluded involving Mr. Donovan?

Ambassador ENDERS. Yes, sir, I was there for the first 30 minutes or so of the meeting, which lasted 4 hours and which was devoted to a dialog between the counsel, the Salvadoran legal counsel of the American Embassy in San Salvador, and the members of the family. It was not a briefing session given by the State Department, but it is, rather, part of our effort to help the families prepare the most vigorous possible prosecution of the case in the Salvadoran courts.

And under their legal system, one of the important elements if the "acusador particular," an informal prosecutor, if you will, represent-

ing the aggrieved parties and can be retained and can be very effective in the result. So this was the main topic of discussion.

Senator HELMS. Well, what I am getting at, Mr. Secretary, is this: Is there any basis for the statement attributed to Mr. Donovan, any statement by anybody connected with this Government?

Ambassador ENDERS. I know of no such basis, Senator Helms.

Senator HELMS. And you were there?

Ambassador ENDERS. I was there for the first half hour, and my colleagues were there for the remainder.

Senator HELMS. Very well. Now, here is the problem. If we are going to have a litmus test on whether we are appalled by the murders of nuns or anybody else, everybody will pass that litmus test.

But I was sitting here listening to the testimony this morning, and a thought occurred to me: What if in the United States we had terrorists perpetrating the mayhem that is now going on in El Salvador. Would our judicial system, would our law enforcement system not be in equal disarray? The surprising thing is that they are able to do anything. And all of this finger-pointing, from and by people in this Government and out of it, about El Salvador in the light of the fact that a young man was just found not guilty more than 12 months after he shot the President of the United States.

Now, we live in relative peace and serenity in this country, and, I, for one, think it is a bit untoward for political capital to be attempted to be made by those who make statements that are not accurate, which certainly do not respond to the Communist-inspired terror in El Salvador.

Now, let me tell you about this resolution relating to certification that passed on the Senate floor last week. I made a simple request that we include in it an assessment of what is being done in El Salvador to bring under control the slaughter of literally thousands of people by the terrorists, which are being financed and supported by the Marxists. Because of the configuration of the unanimous consent parliamentary situation in the Senate, I was not allowed, because one Senator objected, to add that to the resolution.

Now, what goes on when we are not going to look at both sides? What goes on, I ask you, when we have a situation where former officials of this Government, one in particular, constantly are making charges attacking the good faith of the administration about a situation which he himself is not blameless in.

We all better wake up and smell the coffee, because if Central America goes down, then the terrorist activities that are now engulfing Central America will come north, and then we will be making judgments about what we will try to do with our judicial system and with our law enforcement.

Mr. Enders, do you think the terms of the certification adequately describe the goals of U.S. policy in El Salvador? Or are there other goals which are of equal importance or greater importance? I am going to have to ask you to think about that until I get back. Otherwise, I will miss the vote.

Senator Kassebaum, why do you not pick up with your questions?

Senator KASSEBAUM [presiding]. I apologize for the revolving questioning here.

Secretary Abrams, I would like to ask you about an article I read where you commented about asking the right questions regarding human rights. If indeed through our concern with the efforts to follow through on human rights policy we decided not to extend any aid, what would happen? You touched on that some in your opening statement.

It is a problem for us in judging a judicial system which obviously has not worked very well. There continues to be questions regarding rights policies, not just in El Salvador but other countries in Central America. How do you believe we can best address our concerns there?

Mr. ABRAMS. It seems to me, Senator, that the fundamental question is to judge whether the government in power is attempting to win the allegiance of the population and to progress toward greater and greater democracy.

Most of the countries in Central America—Costa Rica would be an exception—have very little experience with democracy, and it is a very tough process. At any given moment, most of those countries, there is every reason in the world to turn away because there are usually a very large number of human rights abuses.

To me the question comes down to whether we think the Government is really trying to improve the situation. That is a subjective judgment, and that is one of the difficulties that I have with the certification process. That is, that it seems in some way to be an attempt to legalize what I think is inevitably a subjective political judgment.

We can try to amass the facts, and we have tried to amass all of the facts pro and con in the certification document. But ultimately, one has to characterize it in some way and say what direction one thinks it is going in. We have made the judgment in some cases.

The former Lucas Garcia regime in Guatemala was one of which the judgment was made, and I think there was wide agreement on the Hill that this was not a regime that we should support, because it was not one which seemed to have in mind greater and greater democratization.

But that is certainly not the case in El Salvador, nor, I think it is fair to say, is it conceivably the case in Honduras, where you have two newly elected democratic governments moving very much in the right direction. I think that is the fundamental question.

Senator KASSEBAUM. Well, it is subjective. On the other hand, I believe that the certification process has helped provide leverage which is important to us to follow what is going on and in the case of El Salvador for them to make a decision whether it is that important to them or not as far as what aid they would be receiving. After all, it is a decision that they have to make. I do not think we can impose upon them either land reform or any efforts to say that their judicial system has to deal thus and so.

But, what we can say is that it seems important to us for the economic stability of that country. If we are going to be sending our tax dollars there, then there is a responsibility on our part as well as theirs to meet those goals.

It is subjective, and that is why we all flounder, I think, with wondering exactly what progress as such has been made. I think that that will always be questioned, because certainly for some it is not enough.

Mr. ABRAMS. I think what is very difficult for us is to realize the conditions under which so many Third World countries are struggling toward democracy. They could not be worse. And if they are not bad enough from the point of view of political history and economic difficulties, a guerrilla war just really makes it much worse.

It is the worst possible set of circumstances, and in those circumstances it seems to me extraordinary that they went ahead and held this democratic election. An awful lot of countries in the Third World have canceled or refused to hold elections on much more flimsy excuses such as a querrilla war than exist in El Salvador. Yet, they persevered and had what international observers considered to be an extraordinary achievement.

I do not want to give the impression, if I could just go back a step, that congressional pressure is not extremely valuable. It is. It is, in a way, the motor of our human rights policy overall. My questions are not addressed to the legitimacy, which I think no one can question of constant congressional questioning. They were addressed really to the form of it, because, after all, there is the appropriation process, the authorization process, and my question was really whether in that article whether the particular questions that had been selected out in the certification process did not narrow the debate too much so that some other questions which should be added became peripheral when, in fact, they should be central.

I think the role of the Congress is clearly central, and the only issue I would raise is whether the format now is really the best one.

Senator KASSEBAUM. What format would you think would be better?

Mr. ABRAMS. I think, generally speaking, that the influence that Congress has through the appropriation and authorization process is probably enough and the certification itself—well, I guess I feel better about giving you the report without giving you that bottom-line judgment that forces us to make a black-or-white statement because it necessarily forces some simplification and perhaps with even more difficulty it forces quantification of things that are really difficult to quantify.

In a way, this certification is like our country reports on human rights. It is not a lawyer's brief giving all of the good stuff and none of the bad stuff. We try to put it all in there. And some of what we put in is not directly relevant in a sense to the certification. Certainly, the reporting requirement is not something that I think creates any problem. It is just the notion that all of this can be quantified somehow and then reduced to a simple up-or-down statement. That gives me difficulty.

Senator KASSEBAUM. I think we would all agree with that. Frequently, most issues become ones in which there really is not a simple yes-or-no answer, but everyone demands that. We do not get a chance to develop the complexities and the gray area inbetween because we want to know clearly who the good guys and the bad guys are.

Ambassador ENDERS. Senator Kassebaum, perhaps I could add to this. I think that whatever the imperfections and difficulties of this, we have tried to use it in the spirit I think in which it was given to us, which was to see whether we could not help El Salvador to transform itself while struggling against the insurgency.

I think everybody who has been involved in designing and in applying this instrument is aware that it is an imperfect one. But we think overall it has had some positive results, and we think that we have had a positive response basically from the Salvadoran Government to it.

Senator KASSEBAUM. I believe that it has served a useful purpose, despite all of the frustrations with it. I certainly know, Secretary Enders, when we started out on this, you shared some very serious reservations with the committee about how it could be put to a useful purpose. I think despite the reservations, that it has served a good function.

Before I have to leave again, I would just like to clarify something. When I was talking to you, General, about the ESF and the exact purposes of that fund, my questioning in all of this is really how to get the best use for our dollars and whether an escalation above the 1982 level for military funding would be that important or serve that useful a purpose at this particular point. I share that concern in the total foreign assistance budget, not just for El Salvador.

Regarding ESF, I think there is a lot of confusion as to exactly what that money can be used for. I questioned you about training purposes, and I realize that it should be clarified that it cannot be used for that. But it also goes to countries where there is a security problem and in being able to be used for assistance with payments. It could be a balance where in total it would benefit, it seems to me, military authorization. I do not think that can be ruled out as just never touching security assistance. Am I correct in that? If anyone could help clarify for everyone's understanding what exactly ESF accomplishes, I think it might be beneficial.

General NUTTING. Senator, we, the military, do not have any direct involvement in either the requesting or the application of ESF funding.

Senator KASSEBAUM. I realize that.

General NUTTING. We are strictly limited to the international military education and training [IMET] funds and other moneys made available for that purpose.

Senator KASSEBAUM. The IMET and FMS.

General NUTTING. You are asking me really to draw a line above which they might not succeed, and I would like to say that I think the fact of our support perhaps is more important than the dollar amounts. And, as we have progressed thus far in the last year and a half, we have had a substantial impact in terms of training and instilling a sense of discipline; and, I think, a broader sense of citizenship. I hope that the fact of our support will continue, which is, I believe, far more important than the amounts.

Ambassador ENDERS. Senator Kassebaum, I would just add one thing to that. That is that this is a war which is fought by the insurgents attacking the economic welfare of the Salvadoran people. They destroy buses, they destroy crops and so forth. Obviously, it is a war that in that sense it can be won only if in addition to the military assistance you are able to deal with some of those economic costs and the suffering that comes from that. That is the purpose of the ESF.

Senator KASSEBAUM. Thank you.

The CHAIRMAN [presiding]. Thank you, Senator Kassebaum.

Senator Tsongas.

Senator TSONGAS. Did you vote on the last one?

Senator KASSEBAUM. No. I am going in a few minutes.

Senator TSONGAS. I do not think you have a few minutes left.

Mr. Chairman, there is a statement by the Boston Committee for Medical Aid for El Salvador which I would like to have made a part of the record, if I might.

The CHAIRMAN. It will be incorporated into the record at this point.

[The statement referred to follows:]

PREPARED STATEMENT OF THE BOSTON COMMITTEE FOR MEDICAL AID TO EL SALVADOR, BOSTON, MASS., IN OPPOSITION TO RECERTIFYING THE CONTINUATION OF U.S. AID TO EL SALVADOR

Once again, the Reagan Administration has certified before Congress that human rights conditions in El Salvador are improving. To document this "improving" situation, the Reagan Administration has submitted "data" from the government-censored Salvadoran press to show that the number of people killed by violence has abated during the past 6 months, thereby suggesting that "less" people murdered is equivalent to "less" human rights violations.

Contrary to the assertion of the Reagan Administration, our information indicates that the human rights situation is not improving. Human rights associations in El Salvador (the Legal Aid Office of the Archdiocese of San Salvador and the Human Rights Commission of El Salvador) and other groups such as the Center for Information and Documentation at the University of Central America, Amnesty International, Americas Watch and the Washington Office on Latin America indicate that the assassination of innocent civilians continues—unabated.

It is estimated that since October of 1979, close to 40,000 civilians—1 of every 118 people—have been murdered, most by the Salvadoran military and security forces. Those dead infants, children, old people, and whole families. Violence and murder, perpetrated by Salvadoran Government and security forces upon the civilians in the countryside, has also created as estimated 600,000 refugees, almost 13 percent of the population, according to the United Nations High Commission on Refugees. Dislocated Salvadoran refugees are now in all countries of Central America, as well as in Mexico and the United States. A recent report from the Center for Information and Documentation of the University of Central America indicates that in one refugee center outside the capital where there are approximately 7,000 children, each day from 4 to 7 children die from a ravaging disease. The situation has deteriorated to such an extent that recently, the International Red Cross threatened to withdraw from the country. In a news account (The Washington Post, July 3, 1982), Andre Balmar, a Red Cross delegate said: ". . . we are to provide humanitarian aid in a zone of conflict. It is not our role to protest; we never make public condemnations. . . . On the other hand, we do not intend to allow our presence here to become a label that governments can point to to demonstrate its compliance with humanitarian norms." Murder by government hands continues to be the leading cause of death in El Salvador, far surpassing death by disease or natural causes.

The institutionalized violence in El Salvador perpetrated through the structures of a feudal society and bolstered by a government which acts on behalf of oligarchic interests, must be measured not only in terms of innocent people slaughtered, but also in terms of daily violence of hunger, poverty and malnutrition which has produced in El Salvador the highest child mortality rate of 24 Western Hemisphere areas surveyed by the Pan American Health Association. Even now, the health sector continues to be repressed and militarized as documented by an American Public Health Commission to El Salvador which reported on conditions from the country during July 1980. The medical school, closed since June 1980 by the Salvadoran Army, remains to this day occupied by government forces. The military continues to retain control over the distribution of drugs, medical supplies and blood for transfusions. And rural hospitals, health posts and pharmacies continue to be under seige. Health workers provide services in an atmosphere of constant threat to their own survival, mindful of the fact that many of their co-workers have already been murdered, kidnapped or "disappeared." A recent Washington Post news report (July 26, 1982) indicates that the Salvadoran police tortured a volunteer from the Salvadoran Green Cross, a medical relief agency based in the country.

We would like it known that as doctors, nurses and other health workers, we oppose any aid to a government that wantonly abuses the human rights, including the health rights, of its own citizens. We want to emphasize the point that the recertification process should not depend upon a debate over the monthly variation in the number of those murdered, tortured or disappeared. There is no numerical level below which mass murder becomes acceptable. To suggest that "less" murder is better than "more" murder or to hold to a standard of violence as a criteria from which to assess improving human rights conditions defies rational understandings.

We observe with dismay that the Reagan Administration, with the approval of Congress, continues to make unprecedented cutbacks in health, education and welfare programs at the expense of the most disadvantaged of U.S. citizens. On the other hand it increases, also at unprecedented levels, military aid to countries such as El Salvador. In essence, while it is willing to spend hundreds of millions of tax dollars funding the brutal activities of the Salvadoran Government, the Reagan Administration refuses to maintain adequate funding for immunization programs for our own children, as recently revealed by the Center for Disease Control in Atlanta.

This viewpoint is not our opinion only, but is shared by many members of the U.S. health care community. Our Committee has been circulating a petition amongst health care workers nationwide, calling for a cessation of all aid to the Salvadoran government. Hundreds of signatures that represent not only individual health care workers such as doctors, nurses, social workers, physical and occupational therapists, medical and nursing students and others, but health related associations as well are being forwarded to us weekly. The following are representative of the groups who have also endorsed our petition drive: the American Medical Student Association, OXFAM AMERICA, the Nurses' Network, the Maine State Nurses Association, the Massachusetts Nurses Association, the New York Committee for Medical Aid to El Salvador, the Milwaukee Medical Aid Committee to El Salvador, the Asian Caucus of the American Public Health Association, the Hispanic Task Force of the American Orthopsychiatric Association.

We ask Congress to reject the Reagan Administration certification that the human rights situation in El Salvador is "improving." We urge Congress to discontinue all aid to the present Government of El Salvador. We urge that Congress support all efforts toward a negotiated political solution to the conflict and that it defend the rights of all nations to self-determination.

TERESA CHOPOORIAN, R.N., M.S.,
(For the Committee).
ALAN MEYERS, M.D.
(For the Committee).
KAREN WOLF, R.N., M.S.,
(For the Committee).

Committee members: Steve Anderson-Herman; Naomi Bock, M.D.; Melanie Brunt, M.D.; Teresa Chopoorian, R.N.; Andrienne Epstein, R.N.; Paul Epstein, M.D.; Andrea Fox, M.D.; Jonathan Fox; Nancy Greenleaf, R.N., D.N.Sc.; Steve Hagan; Maurice Lemon, M.D.; Alan Meyers, M.D.; Kenneth Thompson, M.D.; and Karen Wolf, R.N.

Senator TSONGAS. Let me say that when you made the statement, General, alluding that conditions and not Communists make the conditions possible, I was really taken aback, and was very pleased to hear it.

General NUTTING. Senator, that is really the thrust of our training program.

Senator TSONGAS. Have you told the President that?

General NUTTING. I have not had that opportunity, Senator.

Senator TSONGAS. Well, it seems to me that that is a remarkable statement, and it shows a growing sensitivity on the part of the military. And I would hope that that would also be understood in the political sector as well.

Mr. Chairman, yesterday we met with the campesinos. As you know, they were here a couple of months ago and were very critical about what was going on regarding land reform. They came back yesterday

and urged continued aid to El Salvador and said that most of the concerns they had about the land reform issue had been resolved. They laid credit for that to the certification process of this committee and, in particular, the statements made by the chairman.

I would just like to get that on the record and say that I think we have had a role to play in making it clear that there was a limit as to how far we could be pushed.

Let me raise three issues in the time that we have. One, Mr. Abrams, you made a statement, but I was walking out while you did so and you may correct me if I am wrong. As to the question of what are we doing there, you made the statement that we are basically trying to support the center against the extremes. I assumed you meant on both sides. I think that is what you were saying. I think that makes a great deal of sense, and I support that philosophy.

Now, it is not hard to figure out who the extremes on the left are, in terms of the insurgents, et cetera, at least from your description. It is more difficult to figure out who the extremes on the right are. When the campesinos were here, they spoke about two governments: Magana and the military is one government, and D'Aubuisson and the Constituent Assembly is the other government. Clearly, within the framework, to use your phraseology, Magana and the military would fit the center, D'Aubuisson would fit the extreme on the right.

Would you share that view?

Mr. ABRAMS. No, I do not think so. I would define in the context of a very violent El Salvador the extremes as those who are attempting to use violence to achieve their goals. The extreme right clearly exists. And by it, I mean the people who are out there engaging in political murder. We do not know the exact numbers, of course. Everybody's figures differ. But there are hundreds of political murders every month, and some substantial share is being conducted by the right. That is really what I had in mind.

Senator TSONGAS. So you would have to be to the right of D'Aubuisson to be considered extremist?

Mr. ABRAMS. In my mind, you would have to be engaged in murder. You would have to be working against rather than in the political system.

Senator TSONGAS. Would you include under that description some of those in Miami who finance the death squads?

Mr. ABRAMS. I guess so. I think that probably would be fair.

Senator TSONGAS. General, during Vietnam we, over time, eventually promulgated rules of engagement, as you know, which applied to U.S. forces and to the Vietnamese. Basically we pursued the doctrine that if you do not understand when and where you engage, you play into the hands of the opposition. Continuing the comment that you made earlier, we are now providing weapons to the Government that allow them a greater capacity, firepower, that kind of thing. Have we proposed to them or is there, in effect, a code of rules of engagement? Have there been discussions about that? Where do we stand?

General NUTTING. Yes, Senator. There have been discussions, and a code, which I could not quote to you right now, has been discussed within the armed force in El Salvador. And I know in the case of the national guard or national police that there is a code that those force members are required to address in one way or another on a weekly basis.

Much of our training does focus on the necessity for popular support. I commented earlier not only in a moral sense but in a very practical military sense, if you are going to be successful, you have to have the support of the people.

So the answer basically is yes, and our training opportunities continue to repeat that theme.

Senator TSONGAS. Is there a specific written agreement, for example? I have here a copy of the rules of engagement for the employment of firepower in the Republic of Vietnam, which is rather lengthy. Is there a comparable document in El Salvador?

General NUTTING. Senator, I am unaware that there is a comparable document in El Salvador.

Senator TSONGAS. I wonder if I could give you a copy of this and ask you where the differences would be between it and what is the understanding in El Salvador. Why can't a similar agreement be arrived at in this case? It seems to me the situations are clearly not parallel in many respects, but the rules of engagement, I think, were understood in Vietnam. I think most people would agree now that they were effective or reasonably effective and were positive.

General NUTTING. I think they are clearly not parallel. The major difference, of course, is the fact that we are there strictly in a training capacity, not in an advisory capacity and not in an operational capacity. I think the rules of engagement to which you referred did prescribe bounds for the conduct of operations by U.S. forces either unilaterally or in conjunction with Vietnamese forces, and we are not in that situation in El Salvador.

If we were to talk about the imposition of rules of engagement on the Salvadoran armed forces through that government, I guess we would probably run into some concerns for sovereignty, and I am not aware that we have attempted to do that except continually in a rather indirect fashion, which does seem to be having some impact.

Senator TSONGAS. Well, in Vietnam the objective referred to was to be adhered to by all friendly armed forces, which would include the Vietnamese as well.

General NUTTING. You will recall, Senator, there were also some other nations present. Korea had substantial armed forces in Vietnam, as did Australia, and there was a multinational force at work there. That certainly is not the case in El Salvador, where they are prosecuting their own war.

Senator TSONGAS. Agreed. But these rules were imposed on the Vietnamese. I think you would agree. And so the issues of sovereignty there would also have been raised.

General NUTTING. I am not aware of how it might have been done, but I am sure there were concerns for sovereignty, and I am sure we would run into them in El Salvador as well.

Ambassador ENDERS. Senator, if I may comment on this, you will recall that there was a combined command which was led by an American general officer. So there were combined operations that went on.

General NUTTING. Yes.

Ambassador ENDERS. This was for the whole force. But at one time the United States had one-half million fighting men in that country. We have 39 trainers here. This is an entirely different situation. Also, we are dealing here with a light infantry force and use of heavy ordnance and so forth are problems that are not posed in anywhere

near the same way they would have been elsewhere. So that leads you back to education, military education and persuasion.

Senator TSONGAS. Well, an A37 is certainly not like infantry. You are talking about firepower of some substance, I think you would agree. The only point I am trying to make is, I think in Vietnam people after the fact feel that those rules were constructive. My question basically is, have we done the same thing in El Salvador?

General NUTTING. The answer really is yes, but in an indirect fashion, and we will continue in these training efforts to harp on those points which are really central to gaining the upper hand over the insurgents.

Senator TSONGAS. I wonder whether the Vietnam counterpart could be made a part of the record. I think it makes interesting reading.

The CHAIRMAN. We will so incorporate it.

[The material referred to follows:]

[From the Congressional Record, June 6, 1975]

[U.S. Military Assistance Command, Vietnam, Directive Number 525–13, Dated May 1971 (Unclassified Contents)]

RULES OF ENGAGEMENT FOR THE EMPLOYMENT OF FIREPOWER IN THE REPUBLIC OF VIETNAM

1. *Purpose.* This directive provides specific rules of engagement for the conduct of the air and surface operations within the Republic of Vietnam (RVN) which are applicable to US/Free World Military Assistance Forces (FWMAF) and Republic of Vietnam Armed Forces (RVNAF).

2. *Applicability.* This directive is applicable to all MACV staff agencies and subordinate commands.

3. *General.*

(a) The changing nature of operations in the RVN has necessitated the need for a new approach to the employment of firepower. The shift to predominantly small unit operations, coupled with a civilian populace that is becoming more inclined to not observe curfews and restricted areas, makes it imperative to insure against the indiscriminate use of firepower. While the goal is maximum effectiveness in combat operations, every effort must be made to avoid civilian casualties, minimize the destruction of private property, and conserve diminishing resources. Accomplishment of these objectives in view of the frequent combined operations involving US, FWMAF, and RVNAF requires that specific rules of engagement (ROE) be adhered to by all friendly armed forces.

(b) This directive will not be modified by subordinate commanders nor will directives modifying or interpreting substantive rules in this directive be published by subordinate commands. Unit commanders are authorized to issue instructions to users, provided such instructions do not circumvent that substantive rules contained in this directive.

(c) This directive will serve as the basis for standing operating procedures for the conduct of all fires to include artillery, tank, mortar, riverine, fixed wing aircraft, rotary wing aircraft, air defense artillery, and naval gunfire support.

(d) It is not the intent of this directive to restrict commanders from performing their assigned operational missions, but to insure that sound, prudent judgment is exercised in the employment of organic and supporting arms firepower.

4. *Responsibility.*

(a) Advisors will take all necessary advisory actions to promote RVNAF compliance with these ROE.

(b) Senior tactical commanders and senior advisors will:

(1) In coordination with their RVNAF counterparts, where applicable, insure that all units conduct operations in accordance with this directive, and develop positive, practicable, and understandable target clearance procedures to preclude error or misunderstanding.

(2) Insure that all personnel engaged in fire support activities are fully cognizant of the contents of this directive, with specific emphasis on procedures pertaining to clearance for fires and air strikes. Periodic testing of personnel on their knowledge of ROE is encouraged.

(3) Require advisory personnel to insure that US fire support resources provided in support of RVNAF operations are employed in accordance with this directive. If the request of a RVNAF unit falls outside the provisions of this directive, the advisor will take action to suspend the US fire support which is in violation of the ROE.

5. *Definitions.*

(a) Air Strike. An attack on specific objectives by fighter, bomber, or attack aircraft on an offensive mission . . .

(b) Close Air Support. Air attacks against hostile targets which are in close proximity to friendly forces and which require detailed integration of each air mission with the fire and movement of those forces.

(c) Hostile Fire. Fire directed from a hostile source toward friendly forces. It may be delivered by either direct or indirect fire weapons. It does not include devices such as mechanical ambushes, booby traps, and mines.

(d) In Contact. A unit is considered in contact when it is engaged with an enemy force, being fired upon, and returning fire. The supported unit commander is responsible for making the "in contact" determination.

(e) Inhabited Area. Includes any group of dwellings as well as established hamlets and villages that do not qualify as an urban area.

(f) Senior Tactical Commanders and Senior Advisors. Includes CG, XXIV Corps/SA, I Corps and MR 1; CG, I FFORCEB/SA, II Corps and MR 2; CG, II FFORCEV/SA, III Corps and MR 3; CG; DMAC; COMNAVFORV/CHNAVADVGP and Cdr 7th AF/SA, Vietnamese Air Force (VNAF).

(g) Specified Strike Zones (SSZ). An area designated for a specific period of time by Government of South Vietnam (GVN) RVNAF in which there are no friendly forces or populace and in which targets may be attacked on the initiative of US/FWMAF/RVNAF commanders. SSZ will not be referred to as "Free Fire Zones." Furthermore, the term "Free Fire Zone" will not be used under any circumstances.

(h) Strike Aircraft. Fixed wing aircraft of the fighter, bomber, and attack classification capable of conducting an air strike.

(i) Urban Areas. Those areas depicted as built-up areas on an Army Map Service 1:500,000 scale map.

6. *General Rules.*

(a) All possible means will be employed to limit the risk to the lives and property of friendly forces and civilians. In this respect, a target must be clearly identified as hostile prior to making a decision to place fire on it.

(b) The necessary precautionary measures will be taken to avoid the violation of operational and national boundaries.

(c) Religious Monuments and Public Buildings:

(1) The enemy has shown by his actions that he takes advantage of areas or places normally considered as nonmilitary target areas. These areas are typified by those of religious background or historical value to the Vietnamese. When it is found that the enemy has sheltered himself or has installed defensive positions in such places or in public buildings and dwellings, the responsible senior brigade or higher commander in the area may order an attack to insure prompt destruction of the enemy. The responsible commander must identify positive enemy hostile acts either in the execution or preparation. Weapons and forces used will be those which will insure prompt defeat of enemy forces with minimum damage to structures in the area.

(2) The exception to this policy is the palace compound in the Hue Citadel. For this specific area, commanders will employ massive quantities of CS agents and will take all other possible actions to avoid damage to the compound.

(d) Incendiary Munitions and Riot Control Agents.

(1) The use of incendiary type munitions in inhabited or urban areas will be avoided unless friendly survival is at stake or is necessary for the accomplishment of the commander's mission.

(2) Riot control agents will be used to the maximum extent possible. CS agents can be effectively employed in inhabited and urban area operations to flush enemy personnel from buildings and fortified positions, thus increasing the enemy's vulnerability to allied firepower while reducing the unnecessary danger to civilians and the likelihood of destruction of civilian property.

(e) SSZ:

(1) The Army, Republic of Vietnam (ARVN) corps commander in each military region (MR) has the authority to designate, modify, suspend temporarily, or cancel a SSZ. Notification of SSZ designation, modification, temporary suspension, or cancellation will be disseminated by the ARVN corps commander to all

98-270 0 - 82 - 4

commands operating in the MR with a minimum of 72 hours notification prior to the change becoming effective. Notification of US/FWMAF will be through US command channels. Requests for SSZ changes will be submitted to the ARVN corps commander via appropriate command channels.

(2) The senior tactical commanders (or their authorized representatives) are the military clearance authorities in their respective MR.

(f) Specific ROE for the employment of weapons systems in the RVN are outlined at Annexes. . . .

7. *Reports.* This directive requires no report.

ANNEXES

Rules of Engagement—Surface Weapons Excluding Naval Gunfire.
Rules of Engagement—Fixed Wing Air Operations.
Rules of Engagement—Rotary Wing Air Operations.
Rules of Engagement—Naval Gunfire.

RULES OF ENGAGEMENT—SURFACE WEAPONS EXCLUDING NAVAL GUNFIRE

1. *Purpose.* This annex provides guidance for the control of organic weapons and the artillery, mortar, tank, and riverine gunfire provided to the surface commander by US/FWMAF/RVNAF.

2. *General.*

(a) These rules of engagement apply to the conduct of surface operations to include the employment of artillery, tank, mortar, and riverine gunfire by US/FWMAF/RVNAF in both offensive and defensive situations within the RVN. These rules also apply to the employment of US/FWMAP/RVNAF fire support resources in cross support missions for all forces.

(b) Artillery, tank, and mortar fire requests and gunnery techniques require that care and attention be exercised continuously in the formulation of fire requests and in the application of all gunnery techniques. The exercise of sound judgment on the part of all personnel involved in originating the requests for fire, in solving the gunnery problem, and in exercising precise gunnery procedures will provide the best assurance against endangering friendly forces and civilians or destroying or damaging property of friendly forces or civilians.

3. *Conduct of Fire.*

(a) Every effort will be made to observe fires regardless of the target location. Unobserved fires will be employed only where absolutely necessary for mission accomplishment and will be in accordance with the criteria outlined herein.

b. SSZ. Unobserved fire may be directed against all targets and target areas located within a SSZ after notifying the appropriate US/FWMAF/RVNAF clearance authority.

(c) Uninhabited Areas Outside of SSZ.

(1) In uninhabited areas, fire may be directed against Viet Cong (VC)/North Vietnamese Army (NVA) forces in contact without obtaining approval of the provision chief, district chief, sector commander, or subsector commander and US/FWMAF/RVNAF battalion or higher commander.

(2) Observed fire may be directed against targets of opportunity which are clearly identified as hostile without obtaining approval of the province chief, district chief, sector commander, or subsector commander.

(3) Unobserved fires may be directed at targets and target areas clearly identified as hostile, other than VC/NVA forces in contact, only after approval has been granted by the province chief, district chief, sector commander, or subsector commander and US/FWMAF/RVNAF battalion or higher commander.

(d) Inhabited Areas. Fire missions directed against known or suspected VC/NVA targets in or in the immediate vicinity of inhabited areas occupied by civilians will be conducted as follows:

(1) Inhabited areas from which hostile fire is received.

(a) Surface commanders of units engaged in operations involving the maneuver of surface forces in or through inhabited areas may respond with direct fire without prior warning and without prior clearance if, in the judgment of the company or higher commander, his mission or troops would be jeopardized by such warning or delay. However, response should be designed for self-protection and directed only at the source of hostile fire after the source has been positively identified.

(b) Indirect fire missions will be controlled by an observer and may be executed only after approval of the province chief or district chief, and the attacking battalion or higher commander. The only exception to this would be a situation in which the hostile fire presents an immediate threat to friendly forces despite the employment of direct fire.

(2) Inhabited areas containing observed or suspected VC/NVA targets but from which hostile fire is not received.

(a) Surface commanders may initiate direct fire against positively identified enemy targets only after securing approval of the province or district chief and the attacking battalion or higher commander.

(b) Indirect fire missions will be controlled by an observer and will be executed only after approval by the province or district chief and attacking battalion or higher commander. Civilians will be given prior warning by leaflets, loudspeakers, or other appropriate means and given sufficient time to evacuate the area.

(3) Inhabited areas not immediately associated with the maneuver of surface forces will not be fired upon without prior warning by leaflets, loudspeakers, or other appropriate means, even though fire is received therefrom. Should friendly troops be placed in jeopardy, the provisions of subparagraph 3d(1), above, apply.

(e) Urban Areas.

(1) Fire missions directed against known or suspected VC/NVA targets in urban areas must preclude unnecessary destruction of civilian property.

(2) Fire support in urban areas will be governed by the following:

(a) The decision to conduct indirect fire missions in urban areas is retained by the senior tactical commander and requires approval by both him and the ARVN corps commander. The exception to this policy is the built-up areas of Saigon/Cholon/Gia Dinh City. CG, II FFORCEV, is authorized to delegate authority to Commanding Officer, CMAT, for the employment of indirect fire in these areas. No further delegation is authorized.

(b) All indirect fire missions will be controlled by an observer.

(c) Direct fire, flat trajectory weapons are authorized in a direct fire role in urban areas at the discretion of the battalion or higher commander without the prior approval of the senior tactical commander, or in the case of Saigon/Cholon/Gia Dinh City, the Commanding Officer of CMAT. Direct fire weapons will be used to the maximum in the elimination of enemy strong points or fortified structures in urban areas. All types of munitions, except incendiary (white phosphorus), may be used in direct fire weapons including flechette (beehive), HEAT, and canister rounds.

(d) Maximum use will be made of helicopters to maneuver troops and heavy weapons to roofs of key buildings and other locations to expedite cordoning.

(e) Prior to firing in urban areas, leaflets, loudspeakers, or other appropriate means will be utilized to warn and secure the cooperation and support of the civilian populace even though fire is received from these areas.

(f) Fires will not be employed against waterborne craft in international or RVN territorial (coastal) waters unless specifically requested and controlled by a Coastal Surveillance Center (CSC). Clearance must be granted by the province or district chief and the US/FWMAF/RVNAF brigade or regimental level commander.

(g) Illumination rounds are authorized over international or RVN territorial (coastal) waters when specifically requested and controlled by a CSC. Clearance must be granted by the province or district chief and the US/FWMAF/RVNAF brigade or regimental level commander.

RULES OF ENGAGEMENT—FIXED WING AIR OPERATIONS

1. *Purpose.* This annex defines specific operational restrictions and ROE for US/FWMAF/RVNAF fixed wing aircraft in the RVN.

2. *General.*

(a) All targets selected for an air strike will be approved by the province chief directly or through higher RVN authority. Air attacks in SSZ may be conducted without additional GVN/RVNAF clearance only after notifying the appropriate US/FWMAF military clearance authority.

(b) All pilots will receive an air or ground briefing to determine the disposition of friendly forces and civilians prior to initiating an air attack.

(c) Pilots will endeavor to minimize civilian casualties and civilian property damage. Air attacks will not be executed where identification of friendly forces is in doubt.

(d) For purposes of this directive, references to the forward air controller (FAC) also encompass and apply to the Marine Tactical Air Coordinator Airborne (TACA).

(e) US Air Force (USAF), Marine Corps (USMC), and US Navy (USN) strike aircraft will normally be controlled by the following in order of preference as listed:

(1) US Air Liaison Officer (ALO)/FAC.[1]

(2) VNAF FAC/FAO.[1]

(3) Flight leader control using USAF LORAN-equipped aircraft.

(4) USAF MSQ–77 (SKY SPOT) or USMC TPQ–10.

(5) Excluding the Demilitarized Zone (DMZ), flight leader control is authorized for engagement of all targets and target areas located within a specified strike zone after notifying the appropriate US/FWMAF clearance authority.

(6) US OV–10 aircraft commanders may, in an emergency mark a target for themselves and expend their own ordnance or exercise FAC control of each other when operating in groups of two or more.

(f) In an emergency, when compliance with the provisions of paragraph 2e, above, is not possible, the following personnel may designate the target for strike aircraft:

(1) The commander of a company or larger ground unit or US advisor of a unit engaged with enemy forces.

(2) The US/FWMAF/RVNAF pilot of an aircraft supporting a ground unit, who has radio contact with the ground unit involved and can identify friendly positions in relation to enemy positions.

(3) The US/FWMAF/RVNAF pilot of an aircraft required to operate within the vicinity of a hostile inhabited area for the purpose of conducting medical evacuation or supply missions, and where enemy fire presents an immediate threat to the lives of the aircraft crew.

(g) Commanders of units assigned strike aircraft will insure that records of ordnance expended are maintained a minimum of three months. Records will include as a minimum:

(1) Type and amount of ordnance expended on each target.

(2) Coordinates of target.

(3) Date and time of initial and final engagement of the target.

(4) Unit supported.

(h) Inhabited Areas. Fixed wing aircraft close air support missions that involve strikes on inhabited areas must always be controlled by a FAC and be initiated only after US/GVN/RVNAF clearance has been obtained. The decision to conduct such air operations must also be approved by the attacking battalion or higher commander.

(1) If the attack on an inhabitated area from which enemy fire is being received is deemed necessary, and is executed in conjunction with a ground operation involving the movement of ground forces through the area, and if in the judgment of the battalion or higher commander his mission would be jeopardized by prior warning, the attack may be made without such warning or delay.

(2) If the attack on an inhabited area is not in conjunction with an immediate ground operation, the inhabitants must be warned by leaflets, loudspeakers, or other appropriate means prior to the attack, and given sufficient time to evacuate the area. Once the inhabitants of a preplanned target area have been adequately warned that the area has been selected as a target and given sufficient time to evacuate, the area may then be struck without further warning. An exception may be made for herbicide missions in cases where prior warning may jeopardize the safety of the spray aircraft. . . .

i. Urban areas. Air attacks directed against known or suspected VC/NVA targets in urban areas must preclude unnecessary danger to civilians and destruction of civilian property and must be their nature require greater restrictions than the rules of engagement for less populated areas. Therefore, the following specific US/GVN/RVNAF clearance procedures and restrictions must be strictly adhered to:

(1) Air attacks directed against urban areas must always be controlled by a FAC and be initiated only after US/GVN/RVNAF clearance has been obtained.

---

[1] Under visual flight rules (VFR) conditions, when a USAF, USMC or VNAF FAC is not available, a qualified Army Target Identifying Pilot (TIP) may designate the target to be struck and the flight leader of the strike aircraft will control the strike. The supported ground commander will acknowledge the clearance for a TIP directed strike.

The decision to conduct air attacks in urban areas will be retained by the senior tactical commander and requires approval by both him and the ARVN corps commander. This approval is required for all US/FWMAF air attacks to include those in support of RVNAF.

(2) The exception to this policy is the built-up areas of Saigon/Cholon/Gia Dinh City. CG, II FFORCEV, is authorized to delegate authority to the Commanding Officer, CMAT, for employment of US/FWMAF tactical air in the built-up areas of Saigon/Cholon/Gia Dinh City. No further delegation is authorized.

(3) Prior to subjecting urban areas to an air attack, even when fire is being received from the area, the inhabitants must be warned by leaflets, loudspeakers, or other appropriate means prior to the attack and given sufficient time to evacuate the area.

3. *Specific Instructions for Close Air Support (Day or Night).*

(a) ALO/FAC will:

(1) Have a thorough knowledge of the scheme of ground maneuver.

(2) If possible, secure a VNAF FAC or RVNAF observer to assist in directing an air strike when in support of an ARVN unit. If a RVNAF observer is not available, an ALO/FAC is authorized to direct the air strike.

(3) Maintain reliable communications with the ground unit and strike aircraft.

(4) Make positive identification and mark the target.

(5) Insure that strike pilots are aware of friendly locations in relation to target, characteristics of target area, and local weather conditions.

(6) Use 1:50,000 or larger scale maps of target area and photographs when available.

(b) Pilots of strike aircraft will:

(1) Always be under the control of and in direct radio contact, for a strike, with a FAC or designated control agency, airborne or ground, except in a SSZ when flight leader control is authorized (see paragraph 2e(4), above).

(2) Have visual contact with the target or target marker.

(3) Always ascertain the position of friendly forces (or civilians when applicable).

(4) Ascertain local conditions regarding weather, target area, and surrounding terrain characteristics.

(5) Defend themselves against ground fire providing:

(a) The source of the fire can be visually identified.

(b) The strike can be positively oriented against the source.

(c) The fire is of such intensity that counteraction is necessary.

(6) Utilize artificial illumination for night strikes. A waiver of this requirement is granted for aircraft specially equipped for night operations.

(7) Utilize LORAN systems for IFR deliveries. Aircrews making LORAN directed strikes will be in direct radio contact with a designated control agency, airborne or ground, except in an SSZ. Pertinent 7th AF rules and regulations are applicable.

4. *Air Interdiction.* Air interdiction missions will be conducted and controlled in accordance with paragraph 3, above, except for radar controlled strikes as indicated in subparagraph 2e(3), above. For these exceptions, the pertinent 7th AF rules and regulations are applicable.

5. *Border Restrictions for Aircraft Conducting Assigned Missions in the RVN.*

(a) US/FWMAF military fixed wing aircraft will not cross the DMZ, Laotian, or Cambodian border unless specifically authorized by COMUSMACV.

(b) All FAC operating in the vicinity of the borders will have a 1:50,000 or larger scale map of the target area. Maps, mosaics, and photographs will be made available to the pilots.

6. *Jettison.*

(a) Munitions will be jettisoned only in designated jettison areas.

(b) During night or instrument flight rules (IFR) conditions, aircraft will be under positive radar control while jettisoning, except during emergencies as indicated in subparagraph 6d, below.

(c) During day VFR drops will be monitored by radar whenever possible.

(d) Aircraft may jettison munitions in other than designated areas during emergencies when there is an immediate threat of injury to the crew or damage to the aircraft. Every effort will be made to insure that munitions are not jettisoned so that they impact into or near inhabited areas.

(e) Emergency jettisoning of herbicides will be reported immediately to the MACV Command Center giving date-time, coordinates, agent, volume, and circumstances.

7. *Air Reconnaissance and Aerial Surveillance Missions.*

(a) Aerial reconnaissance and surveillance conducted in the vicinity of the DMZ, Cambodian or Laotian border; and in Cambodian, Laotian, or North Vietnamese airspace will be in accordance with authorities established by separate MACV directives.

(b) US Army aircraft may be armed with target marking ordnance while on surveillance missions.

8. *Air to Air Restrictions.* Cdr. 7th AF, prescribes rules of engagement and restrictions for air to air combat in the RVN.

RULES OF ENGAGEMENT—ROTARY WING AIR OPERATIONS

1. *Purpose.* This annex defines specific operational restrictions and rules of engagement for US/FWMAF/RVNAF rotary wing aircraft operating in the RVN.

2. *General.*

(a) All targets selected for an air attack will be approved by the province chief directly or by higher RVN authority. Air attacks in SSZ may be conducted without additional GVN/RVNAF clearance only after notifying the appropriate US/FWMAF military clearance authority.

(b) For the purposes of this directive, all helicopters having an attached ordnance delivery system will employ firepower in accordance with the provisions contained herein.

(c) All pilots will receive an air or ground briefing to determine the disposition of friendly forces and civilians prior to initiating an air attack.

(d) Pilots will endeavor to minimize civilian casualties and civilian property damage. Air attacks will not be executed where identification of friendly forces is in doubt.

(e) Commanders of units assigned armed helicopters will ensure that records of ordnance expended are maintained a minimum of three months. Armed helicopters are defined as those helicopters equipped with an attached weapons system which is fired by the pilot or co-pilot. Records will include as a minimum:

(1) Type and amount of ordnance expended on each target.

(2) Coordinate of each target.

(3) Date and time of initial and final engagement of the target.

(4) Unit supported.

(f) Pilots of armed helicopters will:

(1) Fire only when the requirements of paragraph 3a, below, are met.

(2) Ascertain local conditions regarding weather, target area, and surrounding terrain characteristics.

(2) Defend themselves against ground from providing:

(a) Source of fire can be visually identified.

(b) The return fire can be positively oriented against the source.

(g) Inhabited areas. Armed helicopters involved in air attacks on inhabited areas must receive the approval of and always be in direct radio contact with the designated control agency of the responsible ground commander.

(h) Urban areas. Air attacks directed against known or suspected VC/NVA targets in urban areas must preclude unnecessary danger to civilians or destruction of civilian property, and must be their nature require greater restrictions than the rules of engagement for less populated areas. The decision to conduct air attacks in urban areas will be retained by the senior tactical commander and requires approval by both him and the ARVN corps commander. The approval is required for all US/FWMAF air attacks to include those in support of RVNAF. The exception to this policy is the built-up areas of Saigon/Cholon/Gia Dinh City. CG, TRAC, is authorized to delegate authority to Commanding Officer, CMAT, for employment of armed helicopters in the built-up areas of Saigon/Cholon/Gia Dinh City. No further delegation is authorized.

3. Specific Instructions for Armed Helicopter Engagement.

(a) Fire only when all three of the following requirements are satisfied:

(1) Be under the control of and in direct radio contact, for the attack, with the designated control agency, airborne or ground, except in a SSZ when a designated flight leader is authorized to control.

(2) The target or target market can be visually identified.

(3) Friendly and civilian positions are positively identified.

(b) Attacks on inhabited areas:

(1) If the attack on an inhabited area from which enemy fire is being received is deemed necessary, and is executed in conjunction with a ground operation involving the movement of ground forces through the area, and if in the judgment of the battalion or higher commander his mission would be jeopardized by prior warning, the attack may be made without warning or delay.

(2) If the attack on an inhabited area is not in conjunction with any immediate ground operation, the inhabitants must be warned by leaflets, loudspeakers, or some other appropriate means prior to the attack and must be given sufficient time to evacuate the area. Once the inhabitants of a preplanned target area have been adequately warned that the area has been selected as a target and given sufficient time to evacuate, the area may then be attacked without further warning.

(c) Urban areas will be attacked only when directed by the responsible ground commander and then in accordance with the rules set forth in paragraph 3a, above. Such attacks when so directed will be governed by the restrictions set forth in paragraph 3b, above. Further, only points targets, e.g., specific buildings, will be engaged and these targets must be positively identified to the pilot. The engagement of area targets in urban areas is prohibited. Prior to subjecting urban areas to air attack, even when fire is received from the area, the inhabitants must be warned by leaflets, loudspeakers, or some other appropriate means prior to the attack and given sufficient time to evacuate the area.

(d) Targets of opportunity acquired in an SSZ may be engaged any time after notifying the appropriate US/FWMAF/RVNAF clearance authority.

(e) Ordinance delivery systems in armed helicopters will be fired only when authorized by the aircraft commander.

(f) Airborne test firing of weapons will be conducted only after obtaining permission from the appropriate clearance authority.

(g) US Army, US Marine Corps, and US Air Force armed helicopters are not authorized to engage waterborne craft of any description in international or RVN territorial (coastal) waters. This restriction does not deny aircraft commanders the right to return hostile fire in the exercise of self-defense.

(h) Waterborne craft on inland waterways may be engaged only after being positively identified as hostile and having clearance granted by the province chief, district chief, sector commander, or subsector commander and US/FWMAF/RVNAF battalion or higher commander. During hours of announced curfews, any waterborne craft on inland waterways may be engaged after approval, as above, has been granted.

(i) The following personnel may designate the target for armed helicopters:

(1) The commander of a ground unit or U.S. advisor of a unit engaged with enemy forces.

(2) The US/FWMAF/RVNAF pilot of a helicopter supporting a ground unit who has radio contact with the ground unit involved and can identify friendly positions in relation to enemy positions.

(3) The US/FWMAF/RVNAF pilot of a helicopter required to operate within the vicinity of a hostile inhabited area for the purpose of conducting medical evacuation or supply missions, and where enemy fire presents an immediate threat to the lives of the helicopter crew.

(j) Employment of U.S. Army, U.S. Air Force, U.S. Marine Corps, and U.S. Navy armed helicopters will be coordinated within the operational area with controller aircraft of other services.

4. *Jettison.*

(a) Munitions will be jettisoned only in designated jettison areas.

(b) During night or IFR conditions, aircraft will be under positive radar control while jettisoning, except during emergencies covered in subparagraph 4c, below.

(c) Aircraft may jettison munitions in other than designated areas during emergencies when there is an immediate threat of injury to the crew or damage to the aircraft. Every effort will be made to ensure that munitions are not jettisoned so that they impact into or inhabited areas.

(d) Emergency jettisoning of herbicides will be reported immediately to the MACV Command Center giving date-time, coordinates, agent, volume, and circumstances.

5. *Border Restrictions for Aircraft Conducting Assigned Missions in the RVN.*

(a) Helicopters operating near the DMZ, Cambodian, or Laotian borders are not allowed to cross the border and penetrate Cambodian, Laotian, DMZ, or North Vietnamese airspace unless authorized by COMUSMACV.

(b) Aerial reconnaissance flights along or near the Cambodian or Laotian border are vital to the security of the RVN and U.S. defense efforts. However, extreme care must be exercised in planning and executing incountry missions by reconnaissance aircraft of all services to ensure that inadvertent overflights do not occur. All aircraft involved in coordinating close air support and operating in the vicinity of the border will have a 1:50,000 or larger scale map of the target area. Maps, mosaics, and photographs will be made available whenever possible to the pilots.

RULES OF ENGAGEMENT—NAVAL GUNFIRE

1. *Purpose.* This annex delineates guidance concerning the control of naval gunfire support provided to the surface commander by US/FWMAF.

2. *General.* These rules of engagement apply to the conduct of surface operations with respect to naval gunfire by US/FWMAF/RVNAF in both offensive and defensive situations within the RVN. These rules also apply to the employment of US/FWMAF/RVNAF fire support resources in cross support missions for all forces.

3. *Conduct of Fire.*

(a) Naval Gunfire. Procedures applicable to the conduct and control of naval gunfire are contained in . . . (appropriate directive).

(b) SSZ. Unobserved fire may be directed against all targets and target areas located within a SSZ after obtaining the appropriate US/FWMAF/RVNAF clearance.

(c) Uninhabited Areas Outside of SSZ.

(1) Fire may be directed against VC/NVA forces in contact without obtaining approval of the province chief, district chief, sector commander or subsector commander and US/FWMAF/RVNAF battalion or higher commander.

(2) Unobserved fires may be directed at targets and target areas clearly identified as hostile, other than VC/NVA forces in contact, only after approval by the province chief, district chief, sector commander, or subsector commander and US/FWMAF/RVN AF battalion or higher has been granted.

(3) Observed fire may be directed against targets of opportunity which are clearly identified as hostile without obtaining approval of the province chief, district chief, sector commander, or subsector commander and US/FWMAF/RVNAP battalion or higher commander.

(d) Inhabited Areas.

(1) Fire missions directed against known or suspected VC/NVA targets in inhabited areas occupied by civilians will be controlled by an observer and will be executed only after approval is obtained from the province chief or district chief. The decision to conduct such fire missions will also be approved by the attacking battalion or higher commander.

(2) Commanders requesting naval gunfire on targets in inhabited areas will effect prior warning by leaflets, loudspeakers, or other appropriate means provided that friendly troops are not placed in jeopardy in the interim and the maneuver of surface forces is not involved. Conversely, naval gunfire may be requested on targets in inhabited areas from which hostile fire is being received without prior warning or clearance if it is in conjunction with surface operations and surface forces are maneuvering through the area, and if, in the judgment of the battalion commander, the mission or forces would be jeopardized by such warning or delay.

(e) Urban Areas.

(1) Fire missions directed against known or suspected VC/NVA targets in urban areas must preclude unnecessary danger to civilians and destruction of civilian property.

(2) Fire support in urban areas will be governed by the following:

(a) The decision to conduct fire missions in urban areas is retained by the senior tactical commander and requires approval by both him and the ARVN corps commander. All fire missions will be controlled by an observer.

(b) Commanders requesting naval gunfire support will warn the populace prior to firing into urban areas. Leaflets, loudspeakers, or other appropriate means will be utilized to warn and secure the cooperation and support of civilian populace even though fire is received from these areas. Sufficient time will be allowed for civilians to evacuate the area.

(f) Naval gunfire will not be employed against waterborne craft in territorial (coastal) waters unless specifically requested and controlled by a CSC. Clearance must be granted by the province or district chief and the US/FWMAF/RVNAF brigade or regimental commander.

EXCERPTS FROM VARIOUS DIRECTIVES CONCERNING RULES OF ENGAGEMENT AND OPERATING AUTHORITIES FOR SOUTHEAST ASIA ARE QUOTED IN THIS ENCLOSURE

1. General. Self-imposed constraints by the United States on military operations throughout the conflict in Southeast Asia were adopted to confine the war to military objectives and to minimize both civilian casualties and collateral damage. Verbatim excerpts from the rules of engagement and various operating authorities show a consistent national policy of concern for humanity, and for the institutions of the people of Indochina during the many years of the war.

2. SECDEF Memo for CJCS, dated 29 Sep 65, subject: "Use of ARC LIGHT Forces."

"In the selection of targets, and in all phases of B–52 strike planning and execution, it is essential that due precaution against the possibility of bombing noncombatants continue to be exercised."

3. COMUSMACV Message 31696/091320Z Sep 65.

"Commanders at all echelons to strike a balance between the force necessary to accomplish their mission with due respect to the safety of the commands and the high importance of reducing to a minimum the casualties inflicted on the noncombatant populace."

4. SECDEF Memo for CJCS, dated 18 Dec 65, subject: "Employment of ARC LIGHT Forces (U)."

"I believe it would be more useful to conduct an overall review of current procedures with the objective of establishing a firm basis for providing the highest attainable level of effectiveness, flexibility and responsiveness in the employment of ARC LIGHT forces generally. This would seem to be especially desirable in anticipation of the situation that will prevail in the likely event of a substantial increase in the scope of B–52 operations in Southeast Asia in the months ahead.

Any modifications to existing procedures that may be indicated by this review should take fully into account the following minimum requirements:

Planned and scheduled strikes must be subject to cancellation or recall by proper authority in Washington should political or other considerations so dictate. Thus, pertinent information regarding the status of strikes must be readily available at all times.

Prevention of noncombatant casualties must be a continuing objective; and its attainment substantially assured by adoption of all reasonable measures.

Provision must be made to minimize the possibility of border violations, infringement on the rights of allies and neutrals, and other incidents of a sensitive nature.

Conduct of the program must be kept under continuing close surveillance to preclude its lapsing into the status of routine operations."

5. JCS Message 1020/140007Z Feb 68, subject: "Operations in SVN Involving Laos (U)."

"In emergency situations, US forces are authorized to take necessary counteractions in exercise of the right of self-defense against enemy attacks directed against US/RVN/FWMA forces from locations inside Laos. Keep higher authorities closely advised. An emergency situation is considered to exist when, in the judgment of the US commander, the urgency for taking timely counteractions in self-defense of US/RVN/FWMA forces preclude obtaining prior approval. As necessary, such counteractions may include:

Artillery and airstrikes against enemy forces firing from the Laotian side of the border against US/RVN/FWMA forces.

Maneuver by US troops, while actually engaged and in contact with enemy forces, into Laos as required for the preservation of the force."

6. JCS Message 3677/282307Z Jun 68, subject: "Operations in Vietnam Near the Cambodian Border (U)."

"Authorities and procedures herein are established to provide for the defense of SVN and the security of US/FW/RVN forces therein. Accordingly, except in unusual circumstances as demanded by operational requirements in SVN, action should be avoided which brings US forces into such proximity to the border as to make it likely that aforementioned authorities will have to be used. When possible, the Secretary of State, the JCS, and the American Ambassador, Saigon, should be informed in advance of operations along the Cambodian border which may invoke special authorities contained in this message.

Nothing in this message is to be construed as granting authority to initiate operations in Cambodia to obtain objectives in SVN.

In view of the political implications involved from the US point of view and the extent of US involvement in RVNAF operations, US military personnel in positions to influence RVNAF operations will make every reasonable effort to assure that such operations are conducted within the above guidance and procedures.

Overriding politico/military considerations may, from time to time, dictate that no US military operations be undertaken in such close proximity to portions of the Cambodian border that these authorities and procedures might have to be invoked. In such case, the JCS will provide appropriate instructions as far in advance as practicable."

7. JCS 2865/201835Z Oct. 69, subject: "Operational Authorities (U)."

"In case of enemy ground attacks by small units (up to a battalion in size) south of DMZ, COMUSMACV is authorized to conduct timely, and adequate counteractions against and limited to the attacking force. Such counteractions may include ground operations in the DMZ south of the Provisional Military Demarcation Line (PMDL). No, repeat, no, ground forces may be employed north of the PMDL.

Authority is granted to employ artillery, naval gunfire, tactical air, and B–52s in the southern portion of the DMZ (south of the PMDL) as required by the situation. This includes authority to conduct unobserved fires and to engage enemy targets acquired through other than visual means. Authority is not, repeat not, granted for B–52 overflight of North Vietnam during the conduct of B–52 strikes in the DMZ."

8. 7th Air Force Operations Order 71–17 (Rules of Engagement):

Laos

"BARREL ROLL EAST (designated operational area in Laos):

Armed reconnaissance is authorized within 200 meters of all LOCs . . ."

Targets more than 200 meters from the LOC must be validated and strikes must be conducted under authorized FAC/FAG control or utilizing all weather bombing systems.

Strikes may be conducted within 500 meters of an active village or non-combatants only when ground fire is being received from the location or when in close air support of friendly troops."

Limitations

"No all weather strikes (except LORAN) will be conducted within 3,000 meters of a known village or friendly position.

No LORAN strikes will be made closer than 1,000 meters to a known village or friendly position."

Cambodia

"Areas of Cultural Value:

Angkor Wat Park: This area will not be attacked for any reason. Under no circumstances will FACs control or assist airstrikes of any nation within the Angkor Wat area. Should a FAC observe such a strike being made, he will advise the FANK ground commander and depart the area immediately.

Other Areas of Cultural Value: Except during SAR operations, no US airstrikes will be made within 1,000 meters of any of the areas of cultural value (nearly 100 other sites specifically listed in the directive). US FACs will not control or assist air-strikes of any nation within 1,000 meters of these areas regardless of FANK request or validation."

9. JCS Message 5190/261720Z Jun 72, subject: "Southeast Asia Operating Authorities (U)."

LINEBACKER-subject conditions stated low, TACAIR, ARCLIGHT, Naval Gunfire Support and artillery attacks may be conducted against fixed targets in NVN that are listed on the JCS approved target list.

Following are designated as controlled areas:

The area within 10 nm of the center of Hanoi.

The area within 10 nm of the center of Haiphong.

The Chinese Buffer.

The following are restricted target categories:

Dams, dikes, locks, and other targets or categories of targets that may be specifically restricted by separate directive.

Water craft which are obviously fishing boats or appear to be engaged in fishing.

Clusters of sampans or house boats in populated areas.

Watercraft/aircraft outside 12 nm limit of NVN coast and offshore islands, unless hostile intent against US air or surface craft is apparent.

Third country shipping.

Military airfields may be attacked. However, no North Vietnam airfield on which third nation aircraft are present will be attacked.

Targets, munitions, and strike tactics will be selected to minimize risk of collateral damage to civilian population, possible POW sites, or target categories not authorized for strike.

[Regulation Number 525–4, March 16, 1968]

HEADQUARTERS, AMERICAL DIVISION,
APO San Francisco.

COMBAT OPERATIONS

RULES OF ENGAGEMENT (U)

1. (U) *Purpose.* This regulation establishes criteria for employment of firepower in support of combat operations within the Republic of Vietnam (RVN) and is applicable to all fires regardless of delivery means.

2. (U) *Scope.* This regulation is applicable to all combat and combat support units assigned, attached or in support of the Americal Division.

3. (U) *Definitions.* a. Tactical Area of Responsibility (TAOR). A land area in which responsibility/authority is specifically assigned to the commander of the area for conduct of tactical operations. The commander of the TAOR is responsible for control and coordination of all activities within the boundary, less those activities specifically retained under division or higher headquarters control.

b. Area of Operations (AO). A land area in which US/FWMAF units may conduct tactical operations after receiving approval from the ICTZ commander. The commander of the AO is responsible for coordination and control of all activities within its boundary. An AO is transitory in nature. There is no intention of remaining in the area once the prescribed misson has been accomplished.

c. Specified Strike Zone (SSZ). An area used by VC/NVA which contains no population nor distinctively marked hospitals or religiously or politically significant structures. A SSZ is designated by the ICTZ commander on request thru command channels and constitutes prior political clearance; however, the conduct of fire must be in accordance with the established rules of engagement.

d. Free Fire Zone (FFZ). An area designated by the responsible political authority (District/Province Chief) in which political clearance has been granted for the period specified. Military clearance and compliance with the established rules of engagement are required.

e. No-Fire Zone (NFZ). An area established by the ICTZ commander in which no supporting arms fire will be delivered under any circumstances. Religious establishments, friendly population or other politically significant objects are normally found within these areas. No-Fire Zones may be located within AO's and may or may not have friendly forces located within them. Designation of a No-Fire Zone does not preclude maneuver by ground forces through the area if prior military and political clearance has been obtained. With the exception of the use of supporting fires, rules of engagement for ground maneuver units as established herein apply while inside a NFZ.

f. Observed Fire. Employment of fire support under the direct observation and control of an artillery forward/air observer, FAC or other competent individual.

g. Unobserved Fire. Employment of fire support with no observer capable of adjusting or determining the effect or accuracy of the fire.

h. In Contact. A unit is considered "in contact" when it is engaged with an enemy force. Sniper fire or mortar fire is not considered "in contact" unless such fire interferes with the scheme of maneuver or is inflicting casualties or damage to friendly forces. The tactical unit commander is responsible for making the "in contact" determination.

i. Political Clearance. Approval to fire by the appropriate political authority, normally the District or Province Chief. This clearance may be obtained through U.S. Artillery liaison teams assigned to district and province headquarters.

j. Military Clearance. Approval to fire by the military commander of the area of operations (AO). Necessary to insure that friendly military personnel are not brought under fire.

4. (C) *General.* a. The use of unnecessary force resulting in non-combatant casualties and property loss will embitter the population and make the long term goal of pacification more difficult and costly.

b. The VC/NVA exploit incidents of non-combatant casualties and destruction of property RVNAF/US/FWMAF to foster resentment and to alienate the people against the Government.

c. The circumstances of the conflict call for restraint not normally required of soldiers on the battlefield. Commanders must strike a balance between the force necessary to accomplish the mission, with due regard to the safety of their commands, and the importance attached to minimizing non-combatant casualties. This requires the highest order of leadership and judgment.

d. An unusual requirement is placed on junior leaders to carry out sensitive combat operations, often in an environment where large numbers of civilians are present. The determination of right and wrong in the heat of battle requires a keen, swift, and decisive analysis of all contributing factors and must be based on a thorough understanding of the legal and moral principles involved.

e. A written set of rules cannot be provided that will apply to every situation. Therefore, the final decision on engagement will be at the discretion of the senior tactical commander present who must consider the mission and the situation as well as his responsibility to minimize both friendly and non-combatant casualties and destruction of private and public property. In cases where doubt exists concerning application of firepower, the commander will request guidance from higher headquarters. If the commander cannot contact higher headquarters or time does not permit contacting higher headquarters, the commander will take the action he deems appropriate and notify higher headquarters of his decision and subsequent actions as soon as possible.

f. Nothing shall infringe on the inherent right of a commander to exercise self-defense. The commander may take immediate action against an attacking force with all means available; however, every possible safeguard short of endangering life will be used to avoid non-combatant casualties and the destruction of private property. Firepower will be brought to bear on enemy in populated areas only to the extent required to accomplish an assigned mission.

5. (C) *Conduct of Fire.* a. Individual and crew served weapons:

(1) Pistols, rifles, grenade launchers, hand grenades, claymores, machine guns, and recoilless rifles *may be employed by* commanders under the conditions indicated below:

(a) Against targets that are *observed and positively identified as enemy.*

(b) Against point targets from which fire is being received. (*Indiscriminate fire into populated areas is prohibited.*)

(c) *Against suspected enemy locations when non-combatants would not be endangered.*

(2) Personnel positively identified as enemy who demonstrate an intent to surrender should not be engaged by fire.

b. Indirect fire support weapons (artillery, mortars and naval gunfire):

(1) Unobserved fire may be directed against all target areas located within specified strike zones (SSZ's) and free fire zones (FFZ's) and provided clearance is granted by the military commander in whose AO the SSZ or FFZ lies.

(2) Uninhabited areas outside SSZ's and FFZ's:

(a) When in contact, fire may be directed against VC/NVA forces at the request of a US/FWMAF unit. This situation is considered observed fire even though an artillery air/forward observer may not be the requestor.

(b) When not in contact, observed fire may be directed against targets of opportunity which are clearly identified as hostile, without political and military clearance.

(c) When not in contact with VC/NVA forces, unobserved fires may be directed at hostile targets and target areas, only after political and military clearance is obtained.

(d) Political and military clearance is required before directing either observed or unobserved fire on targets not clearly identified as hostile.

(3) Inhabited areas (Occupied groups of dwellings):

(a) The following conditions must be met in each instance before artillery, mortar, or naval gunfire is directed against enemy targets in inhabited areas.

1. Political and military clearance must be obtained.

2. An observer (FO, AO, FAC) must be on station to direct the fire.

3. Inhabitants must be warned in advance by leaflets and/or loudspeaker systems or by other appropriate means that artillery, mortars, and/or naval gunfire will be directed against enemy targets in the hamlet or village. The one exception is that prior warning is not required when the attack by fire is in conjunction with a ground assault by friendly forces and the ground commander

determines that prior warning of inhabitants would jeopardize mission accomplishment.

(b) The employment of any ordnance which would cause intentional burning of dwellings will be avoided, unless absolutely necessary in the accomplishment of the commander's mission.

(c) Village and hamlet defensive fires will be executed when requested by GVN/RVNAF authority if such fires do not interfere with or materially reduce support of other friendly operations.

(d) Artillery air observers will be briefed on areas containing friendly or potentially friendly population and will comply with rules of engagement listed in para 5a(3).

(e) Unobserved naval gunfire will be employed only when observed fire is not possible because of geography, weather, or lack of trained observer. Unobserved naval gunfire should not be undertaken in close proximity to friendly forces or areas known to be inhabited by non-combatants.

c. Aircraft Delivery Systems:

(1) Forward Air Controllers (FAC) and armed helicopter commanders will be briefed on locations of friendly and potentially friendly populated areas. Strikes will not be executed where identification of friendly elements is in doubt. FAC's and helicopter commanders will reconnoiter the strike area for friendly personnel and non-combatants prior to strike execution.

(2) All close air support missions that involve airstrikes not controlled by radar will be controlled by a FAC. As a portion of the FAC's target briefing to the strike pilots, he will include the location of the nearest friendly elements.

(3) Close air support missions that involve strikes on hamlets or villages must be controlled by a FAC. If the attack on a hamlet or village be deemed necessary and is executed in conjunction with a ground operation involving movement of ground forces through the area, the attack may be without warning; however, appropriate political and military clearance is required. If the attack on a village or hamlet is not in conjunction with any immediate ground operation, the inhabitants must be warned by leaflets and/or loudspeaker system prior to strike execution and must be given adequate time to evacuate the area.

(4) If an armed helicopter operation involves non-combatants, such as in an occupied hamlet or village, political and military clearance must be obtained unless the situation clearly presents an immediate threat to the lives of the crew.

(5) All aircraft receiving ground fire from friendly or potentially friendly populated areas will return the fire only when:

(a) The sources of fire can be visually identified.

(b) The strike or fire can be positively oriented against the source.

(c) The fire is of such intensity that counter action is required.

6. (C) Rules Governing Destruction of Dwellings by Ground Forces.

a. As a general rule, civilian dwellings or private property, including livestock, will not be destroyed except as an unavoidable sequence of combat actions.

b. The destruction of dwellings and livestock of noncombatants as a denial measure is to be left to GVN authorities or RVNAF units.

c. If US personnel are receiving fire from a house, the fire will be returned even though destruction of the house results. Destruction of structures in areas used as VC base camps, or those obviously built by the VC to fight from, is authorized.

7. (C) Indirect Fire Support Weapons Clearance Procedures. In addition to the previously mentioned restrictions and rules of engagement, the following clearance procedures are established for all artillery, mortar, and naval gunfire.

a. Military clearance will be obtained from the RVNAF/US/FWMAF unit in whose TAOR/AO the target is located. The appropriate liaison team or FSE will be contacted for this clearance.

b. Any indirect fires planned within 500 meters of an adjacent TAOR/AO will be coordinated with the corresponding commander.

c. SAV–A–PLANE data for all indirect fire missions must be submitted to FSE or AWCC in accordance with TAB B (Safeguarding Aircraft from Artillery Fires) to Appendix 4 (Fire Support Coordination) to Annex A (Operations) to Americal Division Field SOP.

8. (C) Prevention of Mutual Interference on Inland and Coastal Waterways.

a. The increase of the FWMAF in the Market Time (Coastal waters of RVN) areas require that the following measures be implemented to prevent incidents in which friendly watercraft are attacked by small arms, aircraft, mortars and/or artillery.

b. Watercraft on coastal waterways are not to be attacked unless one of the following conditions is satisfied:

(1) The watercraft is firing on friendly forces. The responsible Coastal Surveillance Center/TOC will be notified as soon as the situation permits.

(2) The watercraft is conducting hostile maneuvers or other actions and coordination has been affected with responsible Coastal Surveillance Center.

(3) The watercraft has been certified as nonfriendly by the Coastal Surveillance Center.

c. Clearance from the Coastal Surveillance Center, Da Nang, can be obtained through Coastal Division 12, Chu Lai (Tel: SHELLBACK 115/217 or FM; OXCLIFF 37.50 MG).

d. Watercraft on inland waterways are not to be attacked without prior political and military clearance. Clearances are a function of the color coding of all inland waterways as either BLUE (civilian traffic restricted during established curfew hours) or RED (civilian traffic restricted 24 hours per day) and are the responsibility of the ground commander in whose AO the waterway is located.

(1) Boats moving in unrestricted waters may be challenged at any time, but will not be destroyed unless positively identified as hostile watercraft.

(2) Boats moving at any time in 24 hour restricted waters that are not properly lighted and boats moving after the established curfew in any inland waterway may be engaged and destroyed without the benefit of a challenge. If the situation permits, all boats should be challenged.

9. (U) Implementation. Implementing instructions and SOPS will be enveloped by major insubordinate commanders to provide for control, coordination, and clearance of fires.

10. (U) References. a. USMACV Directive (C) 95–4, Aviation—US Air Operations in RVN (U), dtd 28 June 1966 with change 1 dtd 14 February 1967.

b. USMACV Directive (C) 525–3, Combat Operations—minimizing Noncombatant Casualties (U), dtb 14 October 1966.

c. USMACV Directive (C) 529–9, Combat Operations—Control, Disposition, and Safeguarding of Vietnamese Property, Captured Materiel and Food Supplies, (U), dtb 10 April 1967.

d. USMACV Directive (C) 525–18, Combat-Operations—Conduct of Artillery—Mortar and Naval Gunfire (U), dtd 21 January 1968.

e. III MAF Force Order (C) PO3121.5, SOP for Ground and Air Operations (U), dtd 10 November 1967.

(AVDF–GC)

For the Commander:

Official:

NELS A. PARSON, Jr.,
Colonel, GS, Chief of Staff,
For Donald B. Chong, LTC, AGC, Adjutant General.

True Copy:

WILLIAM D. SHEEHAN,
LTC, USA, Assistant Inspector General.

[Regulation Number 525–1, January 30, 1968]

HEADQUARTERS, 11TH INFANTRY BRIGADE,
APO San Francisco.

COMBAT OPERATIONS

RULES OF ENGAGEMENT (U)

1. (U) Purpose: This regulation establishes criteria for engaging targets by direct and indirect fire in combat operations.

2. (U) Scope: Applicable to all combat and combat support units assigned, attached or in support of the 11th Light Inf. Bde.

3. (U) General.

a. Indiscrimination in engaging targets that are not clearly defined as being hostile which result in numerous non-batt'e casualties and property loss will tend to embitter the population and make the long term goal of pacification more difficult and costly.

b. The VC/NVA exploit incidents of noncombatant casualties and property destruction by Free World Forces to alienate the people from the government.

c. This situation creates an environment not normally found on the battle field. Commanders must use sound judgment when determining the type and amount of combat power in accomplishing a mission, particularly in populated areas, so as to preclude "over kill" on a target which could result in unnecessary non-battle casualties and property damage.

d. Nothing shall infringe on the right of a commander to exercise self defense. The commander must take immediate action against an attacking force with all available means in unpopulated areas, however, every possible safeguard short of endangering friendly lives will be based to avoid noncombatant casualties and indifferent and indiscriminate destruction of private property when such action is being conducted in populated areas.

4. (C) Employment of small arms and automatic weapons:

a. Individual and crew served weapons to include: M-16, M-60, M-79, M1A1 claymore, M-26 grenade, 50 cal MG, 90MM and 106RR may be employed by commanders against:

(1) Enemy personnel observed with weapons who demonstrate hostile intent either by taking a friendly unit under fire, taking evasive action, or who occupy a firing position or bunker.

(2) Targets which are observed and positively identified as enemy.

(3) Point targets from which fire is being received. (This will not be construed as permission for indiscriminate firing into areas inhabited by non-combatants).

(4) Suspected enemy locations when non-combatants will not be endangered.

b. Artillery, mortar, naval gunfire, tactical air and armed helicopters:

(1) General: Restrictive controls should be applied only to insure that danger to non-combatants and private property is kept to the very minimum and that national borders are not violated. Proper gunnery techniques will be applied to insure maximum accuracy as this is the best assurance against endangering non-combatants and private property.

(2) Employment:

(a) Exclusive of populated areas, unobserved fires may be directed against enemy forces in contact in accordance with normal procedures. When not in contact unobserved fire will be directed only in areas declared hostile by GVN/RVNAF/FWMAF authorities.

(b) Unobserved naval gunfire will not be employed when there is a means of observation i.e., NGLO, FAC, or artillery observer.

(3) Specified strike zones:

(a) Specified strike zones must be approved by GVN/RVNAF as appropriate.

(b) Unobserved fires to include naval gunfire may be directed against all targets and target areas located within specified strike zones.

(4) Uninhabited areas outside specified strike zones:

(a) Fire may be directed against VC/NVA Forces in combat.

(b) Unobserved fires may be directed at targets and target areas other than VC/NVA Forces in contact only with Province Chief, District Chief, Sector Commander, or Subsector Commander approval as appropriate (this includes 11th Inf Bde Recon Zone).

(c) Observed fire may be directed against targets of opportunity which are clearly defined as hostile without obtaining approval from Province Chief, District Chief, Sector Commander, or Sub-sector Commander.

(d) Appropriate Province Chief, District Chief, Sector Commander, or Subsector Commander approval is required before directing fire on targets of opportunity not clearly identified as hostile.

(5) Villages and hamlets: Fire missions directed against known or suspected VC/NVA targets in villages and hamlets occupied by non-combatants will be conducted as follows:

(a) All such fire missions will be controlled by an observer and will be executed only with Province Chief or District Chief approval as appropriate.

(b) Villages and hamlets not associated with maneuver of ground forces will not be fired upon without prior warning by leaflet and/or loudspeaker systems or by other means, even though fire is received from them.

(c) Villages and hamlets may be attacked without prior warning if the attack is in conjunction with a ground operation involving maneuver of ground forces through the area, and if in the judgment of the ground commander, his mission would be jeopardized by such warning as specified in (b) above.

(d) The use of incendiary type ammunition will be avoided unless absolutely necessary to successful accomplishment of the mission.

(e) Following criteria will be used against known or suspected enemy targets in areas occupied by non-combatants:

105MM fires—no closer than 800 meters plus 4 ranges PEs (prob errors).
155MM fires—no closer than 800 meters plus 4 range PEs (prob errors).
8'' & 175MM fires—no closer than 1000 meters plus 4 range PEs (prob errors).

(f) Fires will be placed no closer than 200 meters of any main paved road. When targets are located on or near a road VT fuze will be used to the maximum extent possible.

d. Free Fire Zones: All targets may be engaged at any time by any fire delivery means available to the commander.

e. No Fire Zone: No firing permitted by any weapon without prior approval from this headquarters.

f. Pacified Areas:

(1) Units may conduct cordon and search at request or with approval of the district or village chief and the approval of this headquarters, VN officials and/or advisor personnel must accompany US Forces on such an operation.

(2) Commanders will exercise utmost care to insure maximum non-combatant casualties and property damage.

(3) Fire discipline will be strictly observed. Rules of engagement and types of weapons to be used will be coordinated by the commander and sector/subsector advisor, if possible, prior to commencing the operation.

5. (C) Application:

a. Commanders at all echelons will plan and conduct operations in accordance with this directive.

6. (C) Miscellaneous:

a. Immediately following the attack of areas inhabited by non-combatants, the force commander will insure that an explanation is given to the populace of the need for firing, stressing the point that the enemy forced the action.

b. If non-combatant casualties occur regardless of safeguards, medical treatment and evacuation should be provided by the responsible commander, subject to tactical considerations and resources available.

c. Destruction of fortified villages, structures in VC base camps, or structures that are obviously VC fighting positions is authorized without approval from this headquarters.

d. Coordination must be made with ARVN/civilian authorities to determine the exact hour of curfew. Movement outside of the immediate perimeter after those hours will be construed as hostile. Villagers may move around within confines of a village after curfew, therefore, this must be taken into consideration if a unit is located adjacent to a village.

e. Individuals that appear to be attempting to escape or evade may be frightened, innocent civilians. The commander on the site must exercise judgment as to whether to engage these individuals or not. The commander must base his decisions on his overall knowledge of the area, situation, mission, and safety of his command.

f. Personnel who attempt to evade and are identified as members of NVA or VC Forces by the wearing of a uniform, web gear or pack and/or have possession of a weapon may be engaged. Every attempt will be made to halt these personnel by giving the command halt (*Dung Lai*) and firing warning shots overhead. If attempts to halt evading personnel fail they will be then engaged by fire within intent to wound by firing at lower extremities. The wounded captive will then be treated and evacuated as rapidly as possible for exploitation of intelligence he may possess.

g. Maneuver or fire support elements will not expand the Bde AO without approval of this headquarters: prior coordination with the adjacent AO commander; and American Division Headquarters, will be made by Bde.

h. Perimeter defense (as opposed to a maneuvering force).

(1) A person not belonging to any Free World Armed Force, observed carrying a weapon will be immediately engaged. It must be remembered that within the American AO there are RD Teams which have civilian personnel assigned. These civilians who belong to GNV, normally wear black pajamas and are legally armed with carbines. These personnel will not be engaged. Coordination with District Chiefs of the area is directed in order to ascertain identification of, and how to identify these personnel.

(2) Any person attempting to enter the perimeter by other than recognized routes will be challenged, apprehended, or identified as enemy and will be engaged immediately.

(3) Unidentified personnel inside the perimeter will not be fired on unless positively identified as enemy. All measures will be taken to establish identity of personnel, i.e., challenging, apprehension of unidentified persons, sealing and searching the area, and sounding the alert.

For the Commander:

WILLIAM R. DAKNIS,
Major, Infantry, Adjutant.

HEADQUARTERS, 11TH INFANTRY BRIGADE,
AMERICAN DIVISION,
APO San Francisco.

[Change 1, Regulation 525–1, April 10, 1968]

COMBAT OPERATIONS

RULES OF ENGAGEMENT (U)

11th Infantry Brigade Regulation 525–1, dated 22 Mar 68, is changed as follows:

Page 4, paragraph 4b(5)(e). (Superseded) (C) Unobserved fires will not be fired closer than 1000 meters to non-combatant or friendly troop locations when engaging known or suspected targets. The only exception to this policy is as outlined in paragraph 5, confidential letter, Americal Division. Subject: Counter mortar and Counterrocket Measures (U), dated 29 Mar. 68.

For the Commander:

WILLIAM R. DAKNIS,
Major, Infantry, Adjutant.

HEADQUARTERS, 11TH INFANTRY BRIGADE,
APO San Francisco.

[Change 1, Regulation Number 525–1, February 9, 1968]

COMBAT OPERATIONS

RULES OF ENGAGEMENT (U)

Brigade Regulation 525–1, this headquarters, 30 January 1968, is changed as follows:

4. (C) Employment of small arms and automatic weapons.

f. * * *

(2) (Superseded) Commanders will exercise utmost care to insure minimum non-combatant casualties and property damage.

For the Commander:

WILLIAM R. DAKNIS,
Major, Infantry, Adjutant.

Senator TSONGAS. Would anybody like to comment about the story in the paper on July 3, regarding the Red Cross?

[The article referred to follows:]

[From the Washington Post, July 3, 1982]

RED CROSS SAID READY TO QUIT EL SALVADOR

(By John Dinges)

SAN SALVADOR, July 2.—The International Committee of the Red Cross has "made it clear that it is prepared to pull out of El Salvador" because of growing concern over the Salvadoran armed forces' practice of not taking prisoners in battle, according to a confidential State Department cable to the U.S. Embassy here.

The Red Cross' departure "would be a severe blow to our efforts to maintain congressional support" for U.S. policy in El Salvador, the cable said.

Signed by Secretary of State Alexander M. Haig, Jr., and sent to the embassy in May, the cable instructs diplomats to seek "concrete" actions by the Salvadoran government on a range of problems, including that of the prisoners, that might cause the Reagan administration difficulty in its efforts to certify to Congress that El Salvador is qualified to continue receiving U.S. aid.

The certification that, among other things, the Salvadoran government has made progress in improving human rights conditions here, must be submitted by the administration at the end of this month.

The cable asks for evidence of progress "which we could use in defending certification" necessary for continued assistance. The confidential document, whose authenticity was confirmed by a U.S. Embassy official here, was distributed this week to U.S. journalists under a cover letter of an organization called the Central American Information Office. Calls today to the Cambridge, Mass., telephone number listed were answered by a tape recording asking the caller to leave a message.

A member of the Red Cross delegation here, Andres Balmer, said any decision to withdraw the mission would be made at Red Cross headquarters in Geneva, Switzerland. The Red Cross mission here visits Salvadoran prisons, monitoring compliance with Geneva Convention standards for treatment of prisoners.

Balmer said that virtually all of the approximately 550 political prisoners held by the Salvadoran government were arrested in noncombat situations and that there never have been more than a few captured on the battlefield during the country's 18-month-old civil war.

"There was recently a large military operation in Chalatenango," Balmer said, referring to a government offensive last month involving the three U.S.-trained rapid reaction battalions in the northern province. "The Army announced that 120 had been killed in the fighting, but there was not one prisoner. That worries us a lot.

"We are here to provide humanitarian aid in a zone of conflict. It is not our role to protest; we never make public condemnations" about situations monitored by the Red Cross, he said. "By protesting or pulling out we would lose that effectiveness. On the other hand, we do not intend to allow our presence here to become a label the government can point to to demonstrate its compliance with humanitarian norms."

Relations between the Red Cross and the government were strained two weeks ago when the Red Cross mission accepted a public offer by guerrilla forces to take charge of 43 Army prisoners captured by the guerrillas in fighting in Morazan province. The Salvadoran government failed to respond to a Red Cross request for safe conduct to bring the prisoners out of the battle zone, a Red Cross official said, and nothing has been done to carry out the transfer.

A diplomatic source here said the Red Cross first indicated it would consider pulling out the mission after a Salvadoran official, addressing the U.N. Human Rights Commission in Geneva last March, cited the Red Cross' presence in El Salvador as an indication that human rights are being respected. The United States has avoided any such interpretations of the Red Cross' presence in its human rights reporting.

Balmer said he has toured military installations around the country, giving talks to troops about the Geneva standards and encouraging them not to kill prisoners. But he said soldiers and their officers admit that they routinely kill prisoners, because it is considered too dangerous to transport them from the battlefield.

"You would expect to find some prisoners sometimes in Chalatenango or Morazan [the areas of heaviest fighting], but nothing, never," Balmer said.

The State Department cable said that "we need to demonstrate immediately an improvement" in handling of captured insurgents and that "a specific order to take and protect prisoners issued and publicized by the Ministry of Defense should be highly desirable."

The cable suggested that the Salvadoran government invite "the ICRC [International Committee of the Red Cross] to assist in a program designed to ensure proper treatment of prisoners . . . The ICRC has made it clear that it is prepared to pull out of El Salvador if its concerns are not met."

The cable also recommended a "material incentive system to ensure that prisoners are not killed." The system would call for Army intelligence officers to pay a "nominal sum" to paramilitary units to turn in prisoners they have captured The U.S. Embassy official said today that nothing ever came of their idea.

On the issue of prisoners held by the guerrillas, the Salvadoran government apparently has been reluctant to allow the Red Cross to arrange releases for fear that the transaction would increase the international stature of the Farabundo Marti National Liberation Front, implying the rebels have as "belligerents," according to Red Cross and diplomatic sources.

Guerrilla leaders have said their policy is to release prisoners they take as soon as possible, and Balmer said he is familiar with cases of captured soldiers who have returned after release to their military units. A year ago the guerrillas announced they were holding 11 prisoners in Morazan and asked the Red Cross to arrange their release. In that case also the government refused permission.

The latest batch of prisoners was taken in heavy fighting in early June following the guerrilla occupation of the town of Perquin in northern Morazan. One of the prisoners the guerrillas claimed to hold is Col. Francisco Adolfo Castillo, the deputy minister of defense, whose helicopter was shot down in the Perquin area June 17.

Senator TSONGAS. Has the situation with the Red Cross straightened out? Where do we stand now?

Ambassador ENDERS. The ICRC?

Senator TSONGAS. They were at one point threatening to pull out of El Salvador. Has the problem with the prisoners been resolved?

Mr. ABRAMS. Well, you will have noticed that none of us lept forward to deal with that question, and the reason is——

Senator TSONGAS. If you wait 2 minutes, I will be gone anyway. [General laughter.]

Mr. ABRAMS. Maybe I will just talk slowly. [General laughter.]

The reason is, the essence of the ICRC's activities is confidentiality, and the leak of cables is terribly dangerous in situations like this, because it can harm the people whom the ICRC is trying to protect, in this case, confidentiality between the Government of El Salvador and the ICRC and not between us and the ICRC. It is really not a relationship that we are in the middle of.

Obviously, we have encouraged in El Salvador, as we do everywhere, an ICRC presence. I guess you would have to say the proof is in the pudding, and the ICRC is staying.

Senator TSONGAS. Some of the data about how many guerrillas they kill relative to how many prisoners of war they take does lead one to the conclusion that taking prisoners is not a high priority item.

Mr. ABRAMS. With respect to the ICRC, I think it would be wrong to speculate as to what reasons they have for staying, and the fact that they are staying does not really tell us anything about the situation in El Salvador. I mean, it proves that those who say they are leaving for one reason or another are wrong, in that they are not leaving, but one really cannot know what they think the situation is and what they think the trends are, and all one can say is that reports that they are pulling out seem to be wrong, or are wrong.

But with respect to the ICRC, I think probably the less said the better from this end.

Senator TSONGAS. Well, you managed to drag out those 2 minutes rather well.

Mr. ABRAMS. Thank you.

Senator TSONGAS. And thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I will try to take only a couple of minutes, and then will leave to vote. Hopefully another Senator will be able to preside.

The full text of the statement of the Unidad Popular Democratico will be inserted in the record,[1] but I would like to read the staff notes that summarize the conclusions of these present Salvadoran leaders who met with Senate leaders and members of the staff yesterday.

They made five essential points. First, in negotiations with the President of El Salvador, they arrived at agreement on regulatory language that clarifies the points of contention in the phase III land reform process. Second, they say, please keep up the aid. If there is no aid, the reforms will not go through. Third, if you have to cut somewhere, cut economic aid. That goes to the oligarchs and private sector that oppose the reforms—I must say that is something we will have to look into—the peasant leaders went on to say, do not cut military aid. The military is helping us, and they have to fight the war against the subversives on the side. To cut military aid plays into the hands of the oligarchs and the guerrillas, neither one of which wants to encourage democracy in this country.

Fourth, they cited evidence which they would say indicates less human rights violations, and progress in the land reform, and investigation of the land reform leader's murder, and the importance of the elections as supporting certification. And fifth, they argue specifically that the Armed Forces chain of command does not condone violence.

I think that is an encouraging note, and we will put the full statement in the record.

The CHAIRMAN. Senator Dodd, thank you for returning. You can take charge. The minority has seized control, and a coup has been performed. You will reign for the next 10 minutes.

Senator DODD. Mr. Chairman, before you run off, as I expressed on the floor, my only concern has been, Mr. Chairman, that with four or five back-to-back votes, and I realize it is not your fault, it is awfully difficult to have a hearing in which you do not hear the questions back and forth on a matter as important as this, and I regret that we have had to continue and not take a 40-minute recess.

The CHAIRMAN. I would like to note that Senator Dodd did register objection to the procedure. I simply had to rule, and Senator Pell agreed with me, that we would follow this procedure. It is unusual but, I think, better than having to delay this. We would have had to recess for over an hour and a half, and I do not think that would have been in our best interests. But if any questions have been asked previously, I am sure you will so indicate and Senator Dodd can look up the record.

Senator DODD [presiding]. Thank you, Mr. Chairman.

First of all, Ambassador Enders, let me state to you and to the other witnesses that the conclusion I reached the other day is still firm on this, in terms of the decision reached to certify. I think I understand why the administration reached that decision, at least from its standpoint, but I still find the evidence less than compelling.

What I would like to do this morning, and I gather some of it has already been done, is to sort of determine, if I can, whether or not the conditions have been met, what evidence was used to determine whether those conditions have been met, and how reliable the evidence is in reaching those conclusions. It is sort of one broad question.

---

[1] See p. 140.

My second question is, where do we go from here? I think there is some confusion in the minds of people as to what actually happens under the certification process. As you know and I know, there are no teeth as such in the certification requirement. It gives us an opportunity to determine every 6 months how things are progressing in several areas that the Congress and the President have agreed are important conditions or goals to identify. At a later date, we will debate whether to support military or economic assistance, and I think there is some confusion about what actually transpires during a certification period.

I would also like to project ahead a bit and find out what we can look forward to and what sort of tests we will be applying to determine whether in fact there is continuing progress in the areas that we have identified, so that come December or January, when we reengage in this process, we will have some sort of barometer we can follow. This, I think, might be constructive.

Ambassador ENDERS. Senator Dodd, with regard to your first question, the law casts us in a kind of quasi-judicial position. We have to collect evidence and make jugdments on the evidence. The role of the American Embassy in El Salvador is obviously critical to that, and a great deal of this has been tasked on to them.

As you know, we did parallel the effort that was made in the State Department on certification with an intelligence analysis in the intelligence community, but the bulk of the effort is, in fact, data collecting, judgment collecting conducted by the Embassy and the State Department. We put into our certification document the evidence that we had in summary form, but as you saw, quite substantially, and we were persuaded by the evidence that in fact we could certify, and stated why.

Senator DODD. Let me tell you something that happened to me last October when I was in El Salvador. I have a high regard for Deane Hinton.

Ambassador ENDERS. So do I.

Senator DODD. We were sitting at the residence of the American Ambassador in October. Now, this is prior to the actual adoption of the certification process. Our Ambassador turned to me, and I was with staff there at the time—I wasn't sitting alone with him—and he said the following, roughly. He said, I don't care what Congress does with regard to certification. We are going to certify it no matter what. In effect, that was the Ambassador of the United States telling a Member of the Senate what we could expect with regard to the certification process.

Now, maybe that was an offhand comment. Maybe he did not mean it. But when I look over his most recent press conference on, I think, June 11, and I look through some of his comments there and he goes through and he says, I do not personally make the decisions as to what they count. If it is in the press, than you know. I presume they will be in a line in the week's report. You know it is lousy methodology, talking about the methodology we use to arrive at some of the numbers. It has the advantage that it has been lousy consistently. That is our Ambassador talking about the methodology we use in reaching decisions.

I try to be sympathetic——

Ambassador ENDERS. I am not sure, Senator, you are being fair to the Ambassador.

Senator DODD. I am just reporting what he said.

Ambassador ENDERS. Well, in the last case, we were well aware of the defects of the numbers on political violence that we are all using. We were well aware of it, and indeed the report that we submitted to you states what we believe those defects to be. We have said consistently, and what Deane means is that we think, given a consistent methodology, we think the trends mean something. He thinks the trends mean something. Our Embassy in El Salvador thinks that, in fact, violence is significantly down from a year or two ago, and other trends are encouraging.

Senator DODD. Well, let's take a look at trends in land reform, because trends and numbers seem to be the game we are playing. Let me take the absolute numbers for applications for titles filed under decree 207. The absolute numbers on a monthly basis, having gone through and graphed these out to give you some sense of where these run, January 28, 1982, absolute numbers for applications, 624. We then have the certification process in January of this year. The number on February 26, 1982, jumps to 1,551 in that month, that certification.

We now go through the 6-month period from February on down through July. Now, what happens in trends: March 26, 1982, 1,125; April 25, 1982, 809; May 28, 1982, 486; June 28, 1982, 105. Now, if trends and numbers are the game, as I graph that out, you run from February, if you will, 1,551 applications for titles in absolute numbers to 105 in June. Is that a positive trend? That would indicate that one ought to conclude that there is improvement and progress on land reform?

Ambassador ENDERS. Well, now, let me talk to that, Senator. You missed the statement that I made at the start here, I believe, on this subject. If you go back, you can find that ever since a peak in July 1981 of 6,200, when the reform was immediately launched, there has been a long, steady downward trend in applications for title.

Senator DODD. Except for on the certification.

Ambassador ENDERS. I doubt, frankly, that it has very much to do with certification. I think we should look at the underlying question. There is one major factor and two other factors. The major factor is the security situation. If you parse that out by province, by department, you are getting very few applications from the areas in which there is the most fighting, as, in fact, you would expect. The army has other things to do than to protect the process of applications for titles. That is the most important thing that is happening.

But second, we know that we have had serious problems all along. We don't know whether they are any more serious now than they were before, but we have had serious problems all along about landlord resistance and about campesino inertia.

Senator DODD. Let's look at the titles.

Ambassador ENDERS. Senator, let me finish. You know, we have started out on the notion that somehow this is going to be a self-implementing reform. You have heard that word used. Well, we have here, I think, in order to carry through this reform, this part of the reform, a really major effort has to be made which is well beyond the effort, and

this is off the cycle of certification. This is an underlying problem that we all should look at, not just in the certification context, not just every 6 months, but how to carry this thing through.

The original reform was designed in such a way so that you have an office at the capital of each department. The campesinos would walk into that, make their application, and a long process would develop. Well, now, I think it has become increasingly clear that except in areas of nearly total security, that is not going to be enough, and they are going to have to have an outreach organization. They are going to have to have a major effort in order to get people to come in, protect them during the whole process, that has not been launched before.

Now, the United States, in originally advising the people down there on the design of this land reform, kept telling them, it will be self-implementing. It will just go by itself. Well, it is not going to do that. And we should look at that. To try to make this into a mere certification problem, I think, is seriously to distort reality, Senator Dodd.

Senator DODD. Well, I am not trying to do that at all. I do not think you believe I am, either. I do not like the numbers game, frankly. I think it is based on quicksand, in effect, to try and determine whose numbers are right in a lot of these things. I do think what we ought to be discussing is, what is the fundamental policy, what is really the Government's attitude toward some of these things.

I made the point earlier, at another forum, that if you take a crude example, say, of a person who engages in criminal activity and commits so many crimes last year, say, 500 crimes last year, and he commits 350 crimes this year. You can look at that on its face value and say, well, he is a far better criminal today than he was last year. What we ought to be asking is, what are the circumstances and conditions that caused that drop. Was it in fact a change in attitude on the part of the criminal, or were there events and circumstances beyond the criminal's control that caused that number to drop?

The question we really ought to be asking ourselves is, what is the attitude and the policy of the present government in El Salvador in the five areas that we have determined are important to us in this country as a precondition of determining whether or not we are going to financially support that government. That is really the issue. That ought to be the topic of debate, not the question of whether or not your numbers are right, or America's Watch numbers are right, or the ACLU's, or the FMLN's are right. If we get engaged in that, I do not see us coming out anywhere.

On the question of fundamental policy, what appears to me to be the case, anyway, is that we see a bevy of activity right around certification time. We saw, for instance, according to testimony from administration sources, that when the land reform program began to fall apart, the campesinos came up here. The Congress acted almost within hours, in fact, and we find policies changing, in effect. Is that not your conclusion? Did you not agree with that, in fact, with Congress acting when it did in May? It did cause a change in the government's policy with regard to land reform.

Ambassador ENDERS. I would agree that the statements by the Congress and specifically by the chairman of this committee were very influential and had a great impact, but I would add in addition to that, Senator, that already 6 weeks before the statements that are made

here, our Embassy in El Salvador was heavily involved in the long debate and discussion which ultimately resulted in working out some of the legal issues of relaunching this program and much more important, that important leaders in the Government of El Salvador, both civilian and military, were involved in it. After all, it is their reform, not ours.

Senator DODD. True.

Ambassador ENDERS. That is the key. They did it. They got this thing going again, not we. Now, they had a debate in that country over whether they were going to go ahead with land reform. They had a debate between new democratic institutions of the kind that after all we had helped them foster, in which power is diffused. You know, the power is shared in that country. According to democratic institutions, this is what we have been trying to foster, so not any one single person is able to say, this is what we are going to do, and by God, we are going to go out and do it in the countryside. So, they had a real debate about this, and they finally came to the conclusion, and the thing is getting going again.

Senator DODD. What would you look forward to? Let us put aside for the moment graphs, charts, numbers going up and down, and trends. What should you and I be looking forward to over the next 6 months as an indication of what we are to do, just on that issue alone?

Ambassador ENDERS. Land reform?

Senator DODD. Yes, just on land reform.

Ambassador ENDERS. I think the key issue is in fact the long, slow decline—well, it is more than a long, slow decline, it is a fairly sharp decline since July of last year in applications, and there has to be a way in order to get that application. The first step in the process has to be gotten up, and a whole lot of things are going to go into this, security in the area for one.

That is why I suggested that we focus on three or four departments, and just as they have been carried through in the western part of the country, to a large degree, let us find three or four departments in the center or eastern part of the country where they can concentrate. You have to have an outreach to the campesinos themselves. I think compensation is vital. We are just maximizing the resistance now.

Senator DODD. Are you talking about phase III?

Ambassador ENDERS. Yes, I am talking about phase III. You see, so much of the discussion here has not allowed for the major gains that have been made in phase I, which all parties down there agree on. That is where 12 percent of their farmland has been redistributed. Senator, if you could imagine what this country would be like if 12 percent of our farmland were redistributed over a 2-year period, and the kind of struggles that would go on in our legal system and in our Congress over that, I think you would have some sense of the difficulty of the task. Our purpose is to keep it moving forward.

Senator DODD. So, applications, do you have any idea in numbers at all? Are you thinking in those terms at all, given the overall number of people that the plan was originally designed to benefit?

Ambassador ENDERS. You just admonished us not to talk numbers.

Senator DODD. I know that, but you have told me that numbers indicate trends, so I want to know what sort of numbers we might look to.

Ambassador ENDERS. What we would like to see them do is to begin to get those application totals up, to begin to get them out of the areas where they have not come from so far to the degree that that is consistent with the security situation. That is going to be a very difficult task, Senator, but I think that less numbers and getting that going again and focusing on it is the task that they should be accomplishing over the next 6 months or over the next year.

In the political field, we have had a Constituent Assembly. It has to write a constitution. It has to set conditions for presidential elections. What they are working on now is a basis on which they could make the decisions, and I think there will be a political commission created within El Salvador for this purpose, the basis on which they would set up the presidential elections that would occur a year, a year and a half, or a year and three-quarters from now. That is the kind of thing we would look to on the political side.

Senator DODD. Who do you think is really running El Salvador today?

Ambassador ENDERS. El Salvador is run by a coalition government in which a lot of people have——

Senator DODD. Well, I am not really talking about that.

Ambassador ENDERS. But I think that is the answer. That it is Magana or d'Aubuisson or Garcia or somebody else simply does not correspond to reality. They all interact, and this is a pluralistic government in which there is no one single individual who dominates all the rest, and after all, is that not the kind of government that we have tried to foster? Is that not what we mean by a democratic transformation? This is the first step. We mean a diffusion of power, and we mean to have also people from the right and the center and if possible, from the left involved in political competition with each other rather than involved in violent or armed confrontation with each other. That is what we are trying to do, is it not, Senator?

Senator DODD. Who is running the country, Mr. Ambassador?

Ambassador ENDERS. A group of people are running the country.

Senator DODD. The President is not running the country, is he? Is President Magana running the country?

Ambassador ENDERS. Now, look. We just had the chairman reading a statement from the UPD with which he had just met, and the first item on that statement said that President Magana, after long discussions with the UPD, had reached an interpretation of decree 207 which was satisfactory to them, which cleared up the major legal problem that was so strongly debated in this committee 2½ months ago, Senator Dodd.

Now, is that an act of a weak President? No, I think it is an act of a strong President, but he is a President of a coalition Government, and that decision that he made was signed by his three Vice Presidents, one from ARENA, one from the National Conciliation Party, and one from the Christian Democrats.

Senator DODD. When was that letter signed? Do you have a copy of that? What is the date on that?

Ambassador ENDERS. It is last week.

Senator DODD. Was July 27 the date? I believe it was. What was the date of certification?

The CHAIRMAN [presiding]. What was the question?

Senator DODD. What was the date that it was signed? Was it 27th of July? Well, my time is up. I will have to come back to that.

The CHAIRMAN. Thank you very much, Senator Dodd.

I have just noticed a comment made by Mrs. Ghandi on "Meet the Press." It was called to my attention by several colleagues of mine in the Senate this morning, and I would like to just read a few quotations from it, because it might obviously be making reference to an American presence in El Salvador. I would like to ask for any comments that you would like, because Mrs. Ghandi's visit here was an extremely successful one, or so I thought from the standpoint of our bilateral relationships. She is a world leader, and certainly a power in the Third World.

She said on the "Meet the Press" program last Sunday, it may not be exactly the same situation when comparing, that is, U.S. involvement in El Salvador to the Soviet presence in Afghanistan. It may not be exactly the same situation, Prime Minister Ghandi said in answer to a question in a television interview, but the U.S.S.R., as they say, and as the Afghans also say, were invited by the government there, and she goes on to say, it is not just one country that is doing it. We do know that there has been interference by one country or another in other parts of the world, Latin America, in countries of Africa, in countries of Asia. Now, it doesn't make sense to us to distinguish between these.

As I see the difference, having spent a good deal of time in Afghanistan, what 100,000 troops brutalizing a people, fighting a people, are doing at the invitation by a government that was put in by another government, in a sense, as compared with 43 military advisors who are advising and training troops for humane treatment, to carry out their functions of defense of their country, but to change a mode and a habit of action that has been persistent in that part of the world and in that particular country for many years, well, there is a vast difference between those.

I wonder, Secretary Enders and Secretary Abrams, if you would like to comment on it.

Ambassador ENDERS. Mr. Chairman, I could not have said it better, and I would add that the Soviet Union is not encouraging the transformation of that country, Afghanistan, into a democracy, nor is it encouraging an end to human rights violations by the local government, nor in fact is it encouraging the carrying out of the land reform.

The CHAIRMAN. Secretary Abrams?

Mr. ABRAMS. I would simply add that one can draw a distinction, as you did, Mr. Chairman, between 39 trainers and 110,000 combat troops, and one can draw a distinction between the invitation and request for assistance that we have received, not just from the Government of El Salvador, but as you saw yesterday, from the people of El Salvador and the organizations that represent them. One can distinguish that from the situation in Afghanistan, where the so-called invitation came from one of a series of puppet Communist governments installed by the Soviet Union.

So, I must say, I find the statement outrageous.

The CHAIRMAN. General Nutting?

General NUTTING. Mr. Chairman, I share those views, and would emphasize again, when you look at what is happening in the region

as a whole, democracy is being strengthened through the electoral process and, in fact, the real revolution in Central America is the revolution that finds the military institutions of those countries, who have been part of civil military regimes for years in the past and will be on into the future, standing aside and supporting a process that conforms to our values and our goals; and it seems to me it is important for us to be involved military-to-military to assist and encourage that process.

We have been successful in identifiable ways in El Salvador, and I think the goals that we have achieved or searched for over a period of years are visible.

The CHAIRMAN. My reason for concluding that there is such a vast difference and there is no basis for comparison is simply the talking that I have done with people from Afghanistan. I have kept in touch with them. My wife and I headed a fundraising committee for them. Her brother, my brother-in-law, served as Director of the Peace Corps there. He raised his family there. My daughter worked in Afghanistan. We spent time visiting every corner of that country. We have kept up with the Afghans who have come out of that country in one condition or another through the years. What they say about what is happening in their country, we hear constantly.

We have also kept in intimate touch with the people of El Salvador. As you have said, 10 percent of the population of El Salvador is now living in this country, and we have researched as thoroughly as we could what our influence has been. We have been sensitive to it, and there is a vast difference. I think this is the only concern that I had. It was called to my attention by a number of Senators. I had not noticed the article, and unfortunately did not see the program. I appreciate your answers.

Secretary Enders, in the investigation or the case of the investigation of the murder of the churchwomen, we did add that as a part of the certification process to strengthen it, the whole process there. You have indicated that you have been asked by the House Foreign Affairs Committee to provide to them under whatever classification is necessary documents and investigative material, and I believe you have agreed to provide that to them.

Ambassador ENDERS. To the chairman.

The CHAIRMAN. May I make the same request to you on behalf of this committee?

Also, would it be possible for you to declassify any part of that so that it might be given public dissemination?

Ambassador ENDERS. Mr. Chairman, we have been declassifying under the usual freedom of information procedures a substantial part of the documents held by the State Department and the Embassy on this. Those that we believe we must keep classified in order to assure effective prosecution of this case we would be glad to show you as chairman on the same basis that we are showing them to Chairman Barnes, if that is satisfactory.

The CHAIRMAN. Thank you.

Would you reaffirm to the committee that the families have been apprised and kept up to date by the State Department to the extent that you can as to what is occurring and what developments are taking place?

Ambassador ENDERS. We have attempted to do that, Senator. We will continue to do that. In fact, I think we should probably step up our own efforts. I do not know whether you were in the room, sir, when Senator Pell raised the question about a meeting we had a short time ago and a statement made there.

The CHAIRMAN. I was not.

Ambassador ENDERS. I would like to add further to my answer to that that Mr. Donovan has a view of that meeting which is at substantial variance to my own. I think he will be testifying on it this afternoon. I would like to say, though, that we have of that meeting a verbatim account which could be made available if there were any question.

The CHAIRMAN. Taking into account the difficulties which have been foreseen in the past in prosecuting civilians and military personnel for political crimes of violence in El Salvador, has it helped strengthen the hands of those who feel that the accused should be brought to justice to incorporate this as a provision in the certification?

Ambassador ENDERS. Well, I hope so, Senator. I cannot say for certain. The big break in the case came with the formation of a special commission last September by then President Duarte, who worked very closely with the FBI and us and in 5 months was able to put together what we think is a compelling case against the five national guardsmen. I am sure certification and above all the continued attention of this committee and other commitees to the case will be a positive factor in getting justice done in the end.

The CHAIRMAN. Thank you.

Secretary Abrams, could you give us a better understanding of the implications of the recent report of torture in the National Guard headquarters in San Salvador? In yesterday's paper or the day before it was indicated that you and Secretary Enders have regarded the National Guard commander as one of the most responsive, yet apparently this secret facility does exist. Is the existence of such a facility new intelligence to us? What is being done to pursue the question? Are we confident that the story of torture is completely accurate?

Mr. ABRAMS. I would say, Mr. Chairman, without having full evidence of each case, it is clear that human rights abuses, including torture, go on. I do not feel that we have all of the facts relating to that incident that was discussed in the Washington Post article. Some of the things that have been said to us do not square with each other. They are mutually inconsistent. That leads us to conclude that we have to learn more before we really have a sense that we know what happened there.

There is the notion that there are torture rooms in the national police headquarters. There is no indication, I think, of that. I remember Congressman Harkin toured the national police headquarters and felt that he had been given a complete tour. He was taken anywhere he wanted to go. If he said, go through that door, that is where they went. If he said, go down those stairs, they did. That is what happened.

Ambassador ENDERS. And it was an unannounced visit.

Mr. ABRAMS. Yes. They had not been warned of his arrival. Let us be frank. That does not mean, the fact that there are no torture rooms in a building does not mean that prisoners cannot be abused or tortured in it, but the notion that somehow there is a set of torture rooms in a dungeon or basement, I think, has no evidence behind it.

We have said, I have said, and others have said that the national police have made a very large number of reforms under the present commander, and that is not simply the view of the government. I am noting a New York Times article from March about reforms in handling prisoners in El Salvador which notes as well that the general view in El Salvador is that the national police are reforming themselves, and that abuses are being reduced significantly.

That ceratainly in our goal, and that, I think it is fair to say, is the goal of the commander of the national police, and that is the direction in which we are all pushing.

The CHAIRMAN. Thank you very much.

Senator Dodd?

Senator DODD. Thank you, Mr. Chairman.

On that point Mr. Ambassador I wrote you a letter on July 26 as a result of a piece that appeared in the local press regarding alleged human rights violations, and torture. Mr. Chairman, I would like to request that we get a copy of that report. Can we have a copy of that report or whatever was sent? There have been subsequent stories that indicate it is a bit more formal than I originally thought.

Ambassador ENDERS. We have——

Senator DODD. Was it cable traffic or something?

Ambassador ENDERS. We continue to look into this incident, and in fact are pursuing it very vigorously. We cannot say for certain that the reports that we have are totally true, nor that they are false either.

Senator DODD. Who wrote the report?

Ambassador ENDERS. We are pursuing some line of inquiry on this, but there are several aspects to this, Senator Dodd, that we have to be sensitive to. One is the possible jeopardy to either the person who is alleged to have been tortured or members of his family. Second, we are concerned about sources. Third and finally, in the midst of pursuing an issue with the government, we are a little reluctant to discuss this widely.

What I would like to suggest, if I may, is, Mr. Chairman, that perhaps when we are a little further on in the investigation of this, perhaps we could provide a very detailed briefing to you, sir, on exactly what we have found and what our conclusions are.

Senator DODD. Well, can we see that? What is it? Is it cable traffic, or is it a specific report, and who wrote it?

Ambassador ENDERS. On this particular question there have been exchanges between ourselves and the Embassy in a variety of modes.

Senator DODD. So it was our Embassy that made the original report?

Ambassador ENDERS. That is correct.

Senator DODD. Can we see that report, Mr. Chairman? Is that an unreasonable request, to see that cable? I am not asking for it to be done in a public forum. I would be glad to do it in a private session, but I think it is something we ought to see.

The CHAIRMAN. Perhaps we could talk this over after the session. Why don't we meet in room 4219 after the session?

Ambassador ENDERS. Thank you very much.

The CHAIRMAN. I will certainly make a request if there is no legitimate reason not to have that information available to the committee.

Senator DODD. Thank you, Mr. Chairman. Are we still working on the assumption that roughly 50 percent of the violent deaths are

attributable to the security forces and death squads and 50 percent to the insurgents or the guerrillas. Is that rough estimate acceptable.

Mr. ABRAMS. I do not know any basis for that assumption or for any assumption, frankly. Most of the deaths that are reported in the press, for example, are unattributed, and I just do not know how we could find that out. When you find bodies, some sources assume, some of the reports assume that if you find a body which has clearly been subjected to torture, that is a victim of right wing violence or the death squads associated with security forces. But I do not know how that assumption is made, and we have evidence in some cases that that is clearly false. I just do not think we have any assumption on that.

Ambassador ENDERS. We do not, and I think the important thing here, Senator Dodd, is, the part of this phenomenon that we think we can influence is that which may be caused or related in some way to government security forces, and the part that is harder to influence is that regarding the left wing death squads as a separate group or the right wing death squads. We can attempt to deter that, and that is part of the reason why military assistance is important, but the part we hope to influence more directly is the part that could be related to government security forces, and that is what we have been working on, so it is really an operational question in a sense, rather than an analytical one.

Senator DODD. Do we have any sense at all as to the percentage? I was told by our Embassy there that 50 percent is a good figure to use.

Ambassador ENDERS. No.

Mr. ABRAMS. I think we do not really know that. I do have a sense that most of the violence which is coming from the right, if you will, is coming from relatively disorganized civil defense forces and death squads or things like that, and not from the established security forces per se. I think that is because we were having some success with our efforts with the security forces.

The best thing to do would be to disband all the civil defense forces from a human rights point of view, but in the middle of a guerrilla war you cannot do that because they perform a very important security function, but I do have the sense on the basis of the reporting that we get that we are having success with the security forces, not enough clearly yet, but that the violence on their part is decreasing.

Senator DODD. Is what?

Mr. ABRAMS. Is decreasing.

Senator DODD. Well, how do you know that? If you do not have any figures, how do you draw that conclusion?

Mr. ABRAMS. You can only do it by talking to people and trying to get an impression.

Senator DODD. Oh, come on, now. You are telling me you do not know the percentage of the people who are committing the crimes on the right, and yet you tell me it is decreasing and it is increasing on the left? How do you draw that conclusion?

Mr. ABRAMS. How do we draw the conclusion that the national police has improved more than some other police forces? Frankly, Senator, you cannot quantify these things. You can try to ask people mostly who live in El Salvador what impression they get from talking to everybody they talk to about what they hear, how often they hear about abuses by one group or another. It is just not something—it is like asking how many illegal aliens come into the country. By the nat-

ure of the phenomenon, you cannot count it. There are just some things that are not really able to be counted in a straightforward way.

Senator DODD. In the report that you filed, and based on information from most of the other sources, I gather it is basically the Salvadoran press that is at least the fundamental source that is used. Is that correct?

Ambassador ENDERS. Well, the underlying source for that, though, is cases of deaths which are filed with local justice of the peace. They are picked up by the newspapers. We get it through the newspapers, but it comes through the local legal apparatus, and that is the basis for what is put forward. In addition to that, of course, we monitor the Radio Venceremos and other media for an attempt to establish it, but there is an underlying legal mechanism which is involved here.

Senator DODD. But the reporting in the local press of that data is what we rely on in our Embassy?

Ambassador ENDERS. That is correct, and we think that most of the reports come in effect from people getting it off a police blotter.

Senator DODD. What is your assessment of the press in El Salvador? How free a press is it?

Ambassador ENDERS. I think in this regard these are local events, this is not an ideological matter.

Senator DODD. I am sorry?

Ambassador ENDERS. I say, I am not sure that the nature of the press has anything particularly to do with the statistics.

Senator DODD. Do they have a political bias one way or another? How do they feel about Jose Napoleon Duarte, for instance?

Ambassador ENDERS. There are opponents of his that are very important in the press.

Senator DODD. To the left or to the right of him?

Ambassador ENDERS. To the right of him and also to the left of him. Radio Venceremos is also very much to the left of him.

Senator DODD. Are we relying on Radio Venceremos for our numbers?

Ambassador ENDERS. We look at what Radio Venceremos is saying in reaching our conclusion.

Senator DODD. You have press reports. I do not see Radio Venceremos listed here.

Ambassador ENDERS. Not as a separate source. The Embassy's reports each week are based among other things on a perusal of what Radio Venceremos is saying about a given incident.

Senator DODD. I do not recall whether you were responsible in 1981 for drafting the country reports on human rights practices for 1981. In talking about the press, the section on El Salvador reads:

> **The two major morning newspapers are antigovernment from a rightist perspective in both their editorial policy and news coverage. Television and press are constrained only from disseminating information that would abet the guerrillas.**

Mr. ABRAMS. The counting by justices of the peace is not an ideological question. It is a legal process in El Salvador, in a sense.

Senator DODD. But if the press were to report that in fact the security forces were involved in murdering innocent civilians, I presume that is the kind of information that, one, from a government standpoint could be seen as abetting guerrilla elements, and two, would run contrary to the stated editorial policy, if nothing else, of the papers.

Ambassador ENDERS. Senator Dodd, there are almost no reports attributing to individuals either from the left or the right the responsibility for political violence. I do not know whether you have seen the weekly reports from our Embassy, but practically none of the deaths are very clearly attributed to either one side or the other, and that is true of the newspapers as a whole. They are just simple statements about people that have been killed whose deaths are notified to the local authorities.

Senator DODD. Let me ask you about disappearances. Those numbers show an increase. You did not number those pages, so I do not know which one to tell you it is on, but it is your charts in the back. Deaths attributed to political violence is the one that I just ran down. It is on the next page. Civilian disappearances.

Ambassador ENDERS. Well, we do not know what they show. The press reports do not show a trend, and the other sources are all over the lot. For example, a leftwing organization at the University of Central America shows a sharply declining trend. Is that what you are citing Senator?

Senator DODD. What are you talking about now?

Ambassador ENDERS. I am talking about the UCA.

Senator DODD. No, the UCA shows a marked increase, 297 disappearances.

Ambassador ENDERS. We only have the report for the last 5 months. Let me read you the numbers.

Senator DODD. Wait a minute. You have 196 from press reports in August through December of 1981, and you have the UCA reporting 297 from January to May.

Ambassador ENDERS. And what does the report say? It is 102 in January, 86 in February, 57 in March, 16 in April, and 35 in May. Is that a decline trend or not? We do not know what the earlier numbers are. I mean, you should not really try to make too much out of this, because we do not know what they are reporting.

Senator DODD. That is my point. In effect, you are making my case.

Ambassador ENDERS. If that is your point, I would be glad to give it to you.

Senator DODD. Then the numbers are really a shell and pea game?

Ambassador ENDERS. No, we are doing the best we can. We are trying to report to you what we know about it, and what all of the limitations are. We have been asked by the Congress to assess this phenomenon. We do not know how fully relevant this data is. This is the best we can do. We do not have a whole bunch of advisers, as we did in Vietnam, in each village, so that we can tell you more or less what our judgment is in each village.

Senator DODD. You are not recommending that, are you?

Ambassador ENDERS. No, I am not recommending that, and I hope you are not.

The CHAIRMAN. Senator Dodd, may I ask how much longer you have of questions?

Senator DODD. I do not know. A few more minutes, Mr. Chairman. I have only just covered a few minutes of my questioning.

The CHAIRMAN. Fine. Let me ask you then if we could follow the following procedure. I must go to a Republican Policy Committee meeting and give a report. I would like to finish my questions. I think

I can do that in 10 minutes. And then we will plan on recessing after you finish until 2 o'clock, if you would be good enough to recess the committee then.

I wonder, Secretary Enders, if you would describe in more detail what you meant when you said the judicial system is nearly obliterated in El Salvador, and tell us what the Government of El Salvador is doing to make a workable judicial system or create one.

Ambssador ENDERS. What I meant by that is the phenomenon that I think we have all been up against, that although common crimes can in some cases be prosecuted successfully in that country, crimes that appear to have some political aspect to them or could have some political aspect to them have not been prosecuted in the last 3 years to conclusion in any significant number of cases. I think this is a situation which is beyond the experience of anybody in this room.

Mr. Chairman, we are used to a legal system that does function, if sometimes slowly, in this country. In that country, the judges are clearly afraid to reach judgments. Witnesses are afraid to come forward. Procedures themselves have been antiquated, and with the legal system which is in force in that country, maybe lends itself to some degree to those who wish to slow the process down.

What is being done to overcome this? Well, once a legal system breaks down, it is very hard to get it going again, because somebody has to make the first move. Somebody has to make an act of courage, expose himself in some way, to do this. But there are some encouraging signs. The new government appointed a new supreme court, 13 very respected people, and we think that they will begin to have an important influence on the judicial system. We saw during this certification period the first quick arrests of security forces that were charged with assassinating Christian Democratic mayors, and that was encouraging to us, as well as relatively substantial numbers of soldiers and National Guardsmen arrested for alleged crimes.

The next step has to be to see that these people that are now arrested are brought to trial in some cases, and that is going to be hard, but one of the reasons in addition to the fact that it involves our country women and men, one of the reasons that we are so interested in the nuns' case and the land reform workers' case is that this is an opportunity for the Salvadorans to make their system work to bring justice in a very widely publicized case, and we are looking to that, in effect, as one of the symbols of beginning to restore, little by little, the legal system, but it is a major problem. I think it is one of the most important problems in that country.

The CHAIRMAN. Secretary Enders, this next question is either for you or your colleagues, whomever might have the information, or if you do not have it with you, you can supply it for the record.

The certification states that during the most recent certification period, 109 members of the Salvadoran Armed Forces were disciplined for various offenses. Of this number, how many offenses involved human rights abuses?

Mr. ABRAMS. The majority did, Mr. Chairman. I do not have the numbers.

The CHAIRMAN. The majority?

Ambassador ENDERS. I think we have a breakdown in our certification.

The CHAIRMAN. Apparently 56 of these cases had been submitted for judicial action. How were the remaining 53 cases handled?

Ambassador ENDERS. If I could respond to your first question, Mr. Chairman, of the 109, 29 were accused of murder, 21 of assault, 11 of rape. Whether the other accusations related to human rights violations, we do not know.

The CHAIRMAN. Of the 56 cases that have been submitted for judicial action, if there were that many, how were the remaining 53 cases handled?

Ambassador ENDERS. Our understanding is that those remaining officers and men were dismissed or remain under detention as disciplinary action. There have been a substantial number of dismissals, particularly from the National Guard, in the last 3 years.

The CHAIRMAN. Have any of the 56 cases gone to trial?

Ambassador ENDERS. No. Not to my understanding. And that must be one of our targets in the future, to get them to trial.

The CHAIRMAN. And I assume no convictions have been obtained.

Ambassador ENDERS. That is correct.

The CHAIRMAN. Could we target that for reporting in the next certification, then, as to what has been done about obtaining trial and conviction? If convictions are not obtainable against those elements of the military responsible for serious human rights abuses, then aren't disciplinary actions of very little value? If they do not recognize there is a real penalty involved, doesn't this kind of discipline sort of mock the judicial system and concern for human rights?

Ambassador ENDERS. We understand that within their system detention or dismissal is, for people in the National Guard or the Armed Forces, is indeed regarded as substantial punishment.

I would agree with your point that it is important that the legal process be carried to the point of conviction.

The CHAIRMAN. I have just a couple of other questions. Would you give a brief assessment of the status of the military campaign as it is being carried on? Is the Salvadoran military gaining in its efforts to control the insurgency? What was the impact of the elections on the guerrilla forces, for instance? And do the guerrillas continue to receive supplies from Nicaragua through Honduras? If so, what evidence do we have of this?

General Nutting?

General NUTTING. Yes, Mr. Chairman, I will try to summarize that situation. But of course, it is really a constantly changing situation and it is very difficult to describe at any given time the degree of security that may be extant in any area of the country.

I think, in summary, it is fair to say that in recent months the quality of professional performance in the pursuit of strictly military security missions has been elevated. And during this entire process, over the period of a couple of years, popular support certainly has not gone to the guerrillas. It has generally gone to the government forces, and they do enjoy the support of the people, which probably ultimately is the best measure we have.

They are able, with their present forces, to extend the general degree of control or security over large portions of the country. They obviously are not able totally to deter or defeat the guerrillas' ability to destroy elements of the system.

Most recently the guerrillas continue to attack the electrical power distribution system and the transportation system. The government forces in each case respond, but usually after the destruction of an important facility has taken place.

It is apparent, also, that at given times and places, for example most recently in northern Morazan Province back in May, the guerrillas are able to take an initiative and control territory for limited periods of time. I believe that the town of Perquin in May was actually in guerrilla control for something approaching an 18-day period.

When a countereffort is mounted by the government forces, in each case they are able to restore control. So I say that when they know where they should be at any given time, they are able to exercise that degree of control. It is the nature of a guerrilla insurgency.

Their total capability has been raised over the last several months and they have demonstrated perhaps the best degree of control nationwide during the election period itself. That was a fairly substantial effort, well planned and well executed. Since that time we have seen at least two operations where the professional development of a situation has been encouragingly improved.

The answer to the last question, Mr. Chairman, is, yes, there continues to be movement of military supplies and equipment through Nicaragua, across borders through Honduras. At any given time, some degree of success has been achieved in interdicting those movements. When success begins to be achieved in one manner of transportation, then usually the effort shifts to something else. So there is fairly continually the movement of at least small quantities by land, sea and air routes of communication, very difficult to interdict in a total way.

The CHAIRMAN. Thank you very much.

One last question is directed, Secretary Enders, to you. It has several parts and I will put it all in one question. Because you have recently returned from El Salvador, I presume you did discuss the land reform process. Could you give us an assessment of the new Decree 13, which supposedly remedies some of the faults in the land reform program?

Does Decree 13, for instance, resolve difficulties with respect to who is eligible to benefit under the phase III program? And can you tell us how the decree came about? Then, looking to the future, did you discuss the specific goals for future progress in the land reform program, and are you satisfied that the land reform is firmly and irreversibly on track?

Ambassador ENDERS. With regard to Decree 13, it is the final product of a long effort at adjustment that began immediately after the first action of the constituent assembly, which was on April 18. A series of actions were taken in between, and a very large number of discussions were held in between.

Our judgment of that decree and, more importantly, the judgment of the Salvadoran administration of that decree is that it does indeed effectively close the loopholes that appear to have been opened up by earlier decrees and legislation. That leaves the underlying problem that we have discussed here earlier this morning, Mr. Chairman, of how to get the applications moving again, how to make sure there is security for them, how to speed up this long process that goes from application to survey to compensation, to survey to provisional title to compensation, to final title, how to speed that up for the phase III part of the reform.

The phase I part of the reform, the big properties, we think is absolutely irreversible. And as to phase III, those that have, in fact, obtained provisional titles we think will indeed be able to maintain them and we hope carry them through to definitive titles. But we are concerned about moving it up from there. That will be the struggle next time.

We have not discussed numerical targets. We think they are somewhat artificial or unrealistic in a situation which is heavily marked by insurgent activity. But there has to be a major effort made to move this reform forward. It is headed in the right direction now, but we have to keep it going.

The CHAIRMAN. Thank you very much.

After the completion of Senator Dodd's questions, the committee will stand in recess until 2 p.m., at which time public witnesses will be called.

I would like to state at this time that I think we have improved the process this time over 6 months ago. We have studied much more carefully the certification, and I think a very strong effort has been made.

Senator Dodd, the coincidence of not only having five votes, but then both the Democratic caucus and the Republican Policy Committee having lunch today, we can see that we would have been decimated so far as our hearing is concerned. It was not an hour, but an hour and 35 minutes that those five votes took, and we would have backed ourselves up.

But I think, with the combination of the intelligence community and Deputy Director McMahon, plus 10 experts who backed him up for every aspect that we probed, plus the public witnesses, plus the very strong record that we built today, I will recommend to every committee member that they thoroughly study the complete record before they come to their conclusions.

I have been extremely satisfied with this session to date, despite the somewhat disjointed nature of it because of the voting. We very much appreciate the time and thought that you have put into this, and not just into the testimony but into the careful consideration, given the seriousness with which you have taken the certification requirement.

I publicly want to assure again those people in El Salvador who want and are working toward a democratic, just, stable society, for progress and peace, that we share that goal with them. This process is working us toward that. And I think you, all three of you, rendered tremendous service to your Government and country in the process of your testimony today. Thank you.

Senator Dodd.

Ambassador ENDERS. Thank you, Mr. Chairman.

Mr. ABRAMS. Thank you, Mr. Chairman.

General NUTTING. Thank you, sir.

The CHAIRMAN. Senator Dodd.

Senator DODD [presiding]. Thank you, Mr. Chairman.

Mr. Ambassador, in the past you opposed the certification process at least when it was originally adopted on the floor of the Senate. As a result of the chairman's statements this afternoon and some indications that you have given to the committee, do you support the certification process that we have in place?

Ambassador ENDERS. Yes. I testified to that effect in January and again here. I think it has some inherent contradictions in it and we should be quite clear about its limitations. I think it would be very wrong to be self-righteous about the certification process.

But within those caveats, I think it has been positive and we are trying to make it work in a positive way. I have said that repeatedly, Senator Dodd.

Let me add that the administration had said earlier that it shared the goals. They were not the only goals, but they certainly shared the goals which had been set forth in the certification process. This exact form that puts us into a kind of quasi-judicial posture is, obviously, one that maybe is not fully comfortable for either you or for us. But we are trying to make the best of it.

Senator DODD. Let me announce that the chairman said we would begin at 2, but we will reconvene at 2:30. I want to make that announcement.

I met this morning for about 1½ hours with the campesino leaders who came up here. I guess a couple of my colleagues met with them yesterday. They sort of contradict something that you offered today, and I would like to ask you about it. And I gather Mr. Prosterman does as well in his testimony.

I asked them about the reaction of the left to the land reform program and their response was that the guerrillas have sort of left them alone on land reform because they realize that it is a popular program, something that if they were to attack or attack the people involved in it, it might cause some erosion in terms of whatever support they have in the countryside.

You stated earlier that one of the problems with land reform is that some of the activity goes on in areas where there is a lot of guerrilla action. How do you contradict what the direct participants of the program claim, that in fact, despite whatever else the left may be guilty of—and they are certainly not mild in their criticism of them—but on land reform they claim that they really have had very little opposition from the left itself, and therefore it is not the problem that you characterize it as in terms of trying to make the land reform program go forward?

Ambassador ENDERS. I think they are two different kinds of statements. Let me be clear that 20 of the phase I cooperatives have had to be abandoned because of insurgent actions. They are not operative. I do not know whether, if we asked the beneficiaries of those 20 cooperatives whether they thought the left had interfered with their right to come into the benefit of the land reform, whether they would give you the exact same report that you have had.

My point is a broader one. You need to have security, freedom of movement, freedom from armed pressure, freedom from other tasks, including military tasks, in order to get the maximum amount out of major societal change of the kind that is being attempted here.

I think it is striking, the inverse correlation that I wanted to show you on that map between the areas in which phase III has done very well and the areas in which it is lagging badly. When you go to Chalatenago and the Honduran border, you see that only 3 percent of those theoretically, by perhaps a very hazy calculation, but theoretically, to benefit from this reform have applied for it.

You then say, why is that? That is because presumably there is so much turbulence, so much danger in that province, that a large number of the beneficiaries already left. Many of them probably are around San Salvador. There are around 200,000 people around San Salvador who are desplazados, and many of them are perhaps potential beneficiaries.

So I am not trying to say that in every case the left has chased people off the land, but the insurgency itself has made land reform impossible to carry forward. There is a very strong correlation.

Senator DODD. Let me ask you this as well, and I should have asked it at the outset. In January we received certification signed by the President of the United States. This time the certification was signed by the new Secretary of State, having been in office a couple of weeks. What was the policy reason for the change in having a Presidential certification as opposed to a certification by delegation to the Secretary of State?

Ambassador ENDERS. Senator, as you know, the President is required to make a very large number of determinations, certifications and other actions by law, and there is a standard procedure by Executive order for delegating them. That action was taken early in the certification period. I do not know exactly when.

Well, I think it was later in the certification period. I am sorry. The Executive order was signed on May 24 delegating this authority to the Secretary, and the incoming Secretary of State made his decision on the basis of recommendations from me and from Elliott Abrams.

Senator DODD. Could we have a copy of the Executive order for our record?

Ambassador ENDERS. I would be glad to submit it.

[The material referred to follows:]

[From the Federal Register, May 26, 1982]

PRESIDENTIAL DOCUMENTS

(Executive Order 12365 of May 24, 1982)

FOREIGN ASSISTANCE AND ARMS CONTROL

By the authority vested in me as President of the United States of America by Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381) and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Executive Order No. 12163, as amended, entitled "Administration of Foreign Assistance and Related Functions," is further amended as follows:

(a) At the end of Section 1-201(a) add the following new paragraphs:

"(22) Section 725 of the International Security and Development Cooperation Act of 1981;

"(23) Section 726 of the International Security and Development Cooperation Act of 1981;

"(24) Section 728 (b) and (d) of the International Security and Development Cooperation Act of 1981.".

(b) In Section 1-701(d) delete "659" and "and 670(b)(1)" and insert "620E, 670(a)(2), 670(b)(2), and 670(b)(3)" between "669(b)(1)" and "of the Act.".

(c) In Section 1-102(d), delete "301(e)(3)".

(d) In Section 1-201(a)(1), delete "301(b),", "301(e)(3),", and "302(a)(3),".

(e) In Section 1-201(a)(11), delete subsections "(b)," and "(1)," of the reference to Section 620.

(f) Delete Sections 1–201(a) (17) and (19) and renumber the remaining paragraphs accordingly.

(g) In Section 1–201(b), delete "620(i),".

(h) Section 1–501(a), delete paragraph (1) and renumber the remaining paragraphs accordingly.

(i) Delete Section 1–701(f) and reletter the remaining subsections accordingly.

(j) In Section 1–701(h), delete everything following "(h)" to the end of the section and insert in lieu thereof: "Those under section 520 of the Foreign Assistance and Related Programs Appropriations Act, 1982, with respect to findings.".

SEC. 2. Executive Order No. 11958, as amended, entitled "Administration of Arms Export Controls," is further amended as follows:

(a) In Section 1(n), add at the end thereof: "The Secretary of Defense shall obtain the concurrence of the Secretary of State and the Secretary of the Treasury on any determination proposed under the authority of Section 42(c) of the Act.".

(b) In Section 1(o), delete everything following "(o)" to the end of the section and insert in lieu thereof: "Those under Sections 52(b) and 53 of the Act to the Secretary of Defense.".

(c) At the end of Section 1, insert the following new paragraph: "(p) Those under Sections 61 and 62(a) of the Act to the Secretary of Defense.".

RONALD REAGAN.

THE WHITE HOUSE, *May 24, 1982.*

[FR Doc. 82–14476 Filed 5–24–82; 4:40 pm]

Senator DODD. With regard to the churchwomen and the AID workers who were killed in El Salvador, as you know, we only had a one-time certification in the original bill and therefore, it was necessary to renew this requirement. Has the President signed the joint resolution?

Ambassador ENDERS. Not to my knowledge.

Senator DODD. Is he going to sign it?

Ambassador ENDERS. I do not know exactly what the decision is yet.

Senator DODD. Does anyone else know whether or not the President is going to sign it? Do you know what I am talking about? In the Senate it passed 92 to 3, and 399 to 1 in the House.

Ambassador ENDERS. This would be restoring it as a certification requirement.

Senator DODD. Right.

Ambassador ENDERS. I do not know in exactly what part of the process it now stands, Senator Dodd. All I will say is, you may have noted that our certification document included information on——

Senator DODD. I understand that, but that wasn't included as a legal requirement. Are you recommending the President to sign it?

Ambassador ENDERS. That recommendation was made.

Senator DODD. For him to sign it?

Ambassador ENDERS. [Nods affirmatively.]

Senator DODD. Well, what can we look forward to? You mentioned land reform, that we would like to see applications go up, that you would like to see a better Outreach program, and that you would like to see compensation.

And by the way, in phase II—I meant to mention this—do you think we ought to reinstate phase II? Has it been suspended or repealed? What is your understanding of the action the Constituent Assembly took? And should it be restored in some way?

Ambassador ENDERS. Well, it was never operating. It never got off the ground, and it was so ambitious—well, let me put it this way. Phase I, with 326, originally 326 big farms, presented already a substantial administrative problem, but it was one they could settle. You will remember what happened. Army units came in almost all on the same day and said: Here is the new law, this is what we are going to do. And there was almost no contest of it, and it happened very quickly.

In phase III already, we have seen the problems that result when you have to rely on the initiative of the campesino walking in, *x* number of kilometers, into the capital of the department. And already we think that that needs a much bigger administrative push, in order to go and take on another 1,700 farms, particularly when who knows where the funds are going to come for all of this.

Already we are talking about $1 billion land reform. If you add this additional part, both administratively and financially you will have a tremendous burden.

I think the Carter administration was right to recommend that this not go ahead, and I think the Reagan administration is right to recommend that it not go ahead, too. In fact, I think it is somewhat questionable what is going to be gained by taking over these very efficient, largely coffee-growing farms.

Senator DODD. So you do not see making that a condition that ought to be pursued in the future?

Ambassador ENDERS. No. Do you?

Senator DODD. I think one of the reasons it did not work was because on the farms that had been taken over there was some question as to their status. So you have the original landowners unsure as to what they were going to do. You had the occupants unsure as to what they were going to do because they were on shaky ground. And you did have a drop in productivity, which I think occurred because of the tenuous nature of the titles, the provisional titles under those lands.

I think this is an assessment that has been reached by others as well. Had it been more clearcut, where the decision was definitive and more permanent, as it was in phase I and was in phase III, then you got at least the same levels of productivity, in fact increased levels of productivity in some cases.

In phase II there was nothing indigenously or inherently faulty about the expropriations of those properties, except the precarious nature of the titles. So the old landowner and the new landowner did not know what to do with it, did not want to make the kind of investment needed, and so he did not get the kind of production. I think that was the result.

I think, in fact, if we put some effort into it and made it a little more clear, or if the Salvadorans made it more clear, as to what their future intentions were, productivity would certainly increase.

Ambassador ENDERS. Senator, I think we are talking about two different things. There were not any phase II properties that were intervened. There were some that were voluntarily sold to the Government. But nothing happened on phase II other than a law that was still in effect throughout this entire period—I think it is still in effect now—which prohibits phase II owners from selling their property. And of course, they have not been investing in them because they have been uncertain as to what is going to happen.

I would think it would be wise to have that prohibition lifted at this point, because I do not see what would be accomplished by trying to push the reform on into this area.

Senator DODD. Well, I was also talking about the nuns. I just wanted to be as clear as I can looking down the line with regard to the churchwomen.

What should we look forward to by next December or January? What would happen if there are no prosecutions as of then, if the legal process goes crawling along?

Ambassador ENDERS. Well, their system is different than ours. I am not a lawyer, but I would believe that what has happened is in fact equivalent to a prosecution, if you will, because we have had, after all, the unofficial commission in the case of the churchwomen's murder, that did investigate them. Five of them were incarcerated during that investigation and they have now been turned over to the judge.

They remain incarcerated. They are in the hands of civil authorities. The case is being drawn up, as it is under their system, by the judge himself. I mean, judge and prosecutor are——

Senator DODD. Let me ask you this. If there is not a prosecution by next January, do you think it is still possible to certify that there has been progress in that matter?

Ambassador ENDERS. I think there is a prosecution now. What do you mean by prosecution?

Senator DODD. A trial, a conviction, 6 months from now, 2 years after the fact.

Ambassador ENDERS. I will tell you what my own expectations are at the moment. I expect that the trial date will be announced some time during the fall. I am told that under Salvadoran law once a trial date is announced there is a certain time period for all parties to get ready for the trial itself. I am told that that is at least 90 days. I cannot vouch for that number, but at least 90 days; and that there would be a trial.

My expectation is that the pretrial inquiry, which is decisive in many ways in their system, will be completed in the course of the fall and a trial announced.

Senator DODD. So an announcement of a trial will be progress as far as you are concerned for certification in January?

Ambassador ENDERS. Well, I am not making the next certification now, Senator.

Senator DODD. I am trying to get a target for the next time around.

Ambassador ENDERS. We have been asked to judge on each of these categories, four this time and five next time, what we think the balance is. I would like to recommend that the Secretary do it at that time and not now.

Senator DODD. What has been the total amount either spent or authorized to be spent and appropriated in the last 3 years in El Salvador, economic and military assistance?

Ambassador ENDERS. Including 1982?

Senator DODD. Well, let us start fiscal year 1980 through 1983. At least we have a request in 1983, so I guess 1980, 1981, 1982.

Ambassador ENDERS. Well, let us see now.

[Pause.]

Ambassador ENDERS. May I provide that for the record, Senator, or somebody could maybe calculate it while we continue?

[The material referred to follows:]

Total U.S. economic and security assistance to El Salvador for fiscal year 1980, fiscal year 1981 and fiscal year 1982 is $390 million.

Senator DODD. I realize that today we are here and we are talking just about the certification process.

Ambassador ENDERS. Could I ask you that, if we give you that figure, including 1983, that you will agree to support the 1983 credits?

Senator DODD. As amended?

Ambassador ENDERS. As submitted.

[Laughter.]

Senator DODD. Let me take the opportunity while you are here to talk about something that is related to this, but not directly involved in the certification process, and yet that I think is so directly related that it is going to be a matter of growing concern. I hope it is at the State Department. And that is what appears to be the regionalization of the conflict in Central America.

We have reports of Honduran troops on the Nicaraguan border and the Nicaraguans going across to Honduras, and Hondurans going across on intrusions into Nicaragua. We have Honduran troops going into what is described by the State Department as "disputed lands." Others may decide they are Salvadoran territory, but done so with the approval, obviously, of the Salvadoran Government, whatever the categorization of the property may be.

We have, obviously, the situation in Guatemala that is still a problem. Things seem to be percolating in Costa Rica a bit, at least more than they had in the past. Is there a regionalization of this conflict, and if so what thoughts do you have on it?

What are we considering as a way of dealing with the regionalization, if, in fact, we are deciding that it is broader than just El Salvador, as the evidence clearly indicates?

Ambassador ENDERS. Senator Dodd, I think the first evidence of regionalization of the conflict was the attack on El Salvador, because that was done with support from Nicaragua, and the ongoing command and control apparatus is still there, very definitely. And it has recently been confirmed as being there.

As General Nutting just pointed out, a substantial element of logistic support continues to the conflict in El Salvador.

Senator DODD. Let me see if I understand you. You do not mean that the insurgency problem began there, because certainly we have had that problem in El Salvador long before the Sandinistas took over in Nicaragua. This was not something that happened after the fact.

Ambassador ENDERS. I think, on the contrary, it was on a very small scale prior to the Sandinista takeover and not a significant problem. And it was not until after the Sandinista takeover, in fact, what, September or October, well after, a year after, August, September and October of 1980, that you had the big buildup and final offensive in 1981 and that high point since that time.

On the contrary, this is the very evidence of regionalization. You know well, I know, of the outside support that is involved in that. We

now find that we have had recently—this is from President Monge of Costa Rica, in which he told us that he was very concerned about Nicaraguan interference in his northern provinces.

And what did he ask for? He asked for military assistance, which is something new for a country without an army. He asked for assistance for the security force that he felt he needed to have—a socialist president with long labor union experience.

We had the President of Honduras up here and he said the same thing about his neighbor Nicaragua: Worried about their interference in his country. So in fact, we have had a pattern of widening interference by Nicaragua in its neighbors, and we are seeing a new stage in this because, frankly, the pressure on Costa Rica is worrisome and of concern.

You may have noted earlier in the year that the three neighbors, Costa Rica, El Salvador, and Honduras, got together to form the Central Americans Democratic Community. It was primarily concerned with the establishment of a democratic consensus, but also reflects some of this worry.

So that is one reaction to what you call the regionalization. It started a long time ago, sir.

Senator DODD. But you do believe that it is regionwide and that you are not dealing with a country-by-country problem, but you see it more as something that is being imported rather than indigenous?

Ambassador ENDERS. No; they are both factors that are involved here. I was referring to the efforts of Nicaragua to regionalize the conflict.

It has been regionalized in another way, beginning in 1978, when Cuba first decided to call the three factions from Nicaragua to Havana in order to unite them and to carry on a joint operation. A similar operation was carried out with regard to the five Salvadoran factions, and then again in Guatemala and in Honduras, all by Cuba. This is also a form of regionalization, if you will.

I am not saying to you that these are not insurgents which came from El Salvador or Guatemala or whatever the country was. Clearly they did. But there was an outside element that joined the inside element to create the insurgency in each country.

Now, that is a very well established and I think well-known pattern.

Senator DODD. How deeply involved are we in Honduras? Maybe I should ask you, General, this question: How many military personnel, in uniform or in civilian clothes but who are U.S. military personnel, are in Honduras?

General NUTTING. Senator, I have provided those figures earlier for Senator Pell and would be glad to repeat them.

Senator DODD. I am sorry. I thank you.

General NUTTING. Today in Honduras we are conducting a combined exercise and we have a total of 79 people, U.S. military people in uniform, involved in that exercise. In addition, we have 5 in the military group, with 1 additional administrative assistant there right now, and 34 others involved in operational activity.

So it comes out to a total of 119. Over the last several weeks there probably has been an average of somewhere between 40 and 55.

Senator DODD. What about people out of uniform? Do we have U.S. military personnel who are not in uniform, who are acting in Honduras?

General NUTTING. No; I am not aware of any people out of uniform. I am involved in strictly military involvement, which today happens to total 119 and usually is less.

Senator DODD. Has that number fluctuated considerably in the last few months?

General NUTTING. Not to this extent, and it is at this particular time a result of the exercise that is under way. I say on the average over the last 6 months there probably have been somewhere between 40 and 50 or 55 uniformed people in Honduras, which is an increase over a year ago. But we have had a number of mobile training teams there assisting them in various capacities.

Senator DODD. What is their function there? Are they purely in an advisory or training role?

General NUTTING. Our personnel in the military groups, which of course are limited by law to six, do have a permitted advisory function, which is not normally a very major part of their activity. That is the six in the military groups alone.

The other people there, particularly in El Salvador, are strictly trainers. They are transferring a professional or a technical skill to the Salvadorans, for example, and are not involved in an operational way or are not in an advisory capacity, except as a product of the training they are transferring. That is quite different from the situation in Vietnam. They are trainers specifically.

Senator DODD. Are they located throughout the country? Well, let me ask you directly: Are we involved in the Nicaraguan border in any way?

General NUTTING. In Honduras, do you mean?

Senator DODD. Yes.

General NUTTING. Today there probably are a few U.S. military people in the province of Gracias a Dios on the northeast coast of Honduras, in the area of Puerto Lempira and Mocoron, where the large Miskito refugee camp is located.

We have been involved with two aircraft transferring people and supplies and equipment to that area in response to a request from the Government of Honduras, and, in fact, we have some helicopters there now involved in the civic action projects, trying to assist them in the support of refugees and moving well-drilling equipment and that sort of thing in the country.

So I cannot tell you how many people are near that border. There could be 10 or 20, but normally they recover, in this case to Tegucigalpa, and the aircraft operate out of Tegucigalpa or an airfield nearby at Comayagua.

Senator DODD. Have we had requests from the Honduran Government to increase the numbers of uniformed and nonuniformed personnel, and what are the requests?

General NUTTING. We respond to their requests for training or administrative assistance, and the level generally is governed as a result of their requested assistance, yes. This particular exercise which involves today, it happens to be, 79 people is a mutually planned and developed exercise, from our point a training exercise, and, in fact, the tactical airlift aircraft involved are from Panama, and they are Air Force Reserve or Air National Guard and crews on 2 weeks active duty training performing a live mission in the area. That is where we get our airlift support, from the Air Force Reserve component.

Senator DODD. So we have had no request from Honduras to increase those relatively constant numbers that you have suggested?

General NUTTING. Well, they are not relatively constant. They do change depending upon the mission to be accomplished in the country. I would say that probably over the last 6 months they have averaged somewhere around 40 or 50 people.

Senator DODD. And no request exists today to go much beyond that?

General NUTTING. No, except that this particular exercise has doubled it. But that is only for a period of 1 or 2 weeks.

Ambassador ENDERS. Senator, may I add that these numbers you have been talking about compare with what the intelligence community estimates are 2,000 Cuban military and security advisors in Nicaragua.

Senator DODD. Mr. Ambassador, I am sorry, I was reading something. What was that?

Ambassador ENDERS. These numbers you have been discussing with General Nutting compare with what the intelligence community estimates are 2,000 Cuban security and military advisors in Nicaragua.

General NUTTING. To that should be added about 70 Russians in Nicaragua and about 30, on the average, North Koreans, Bulgarians, and East Germans, who are working with forces in Nicaragua.

Ambassador ENDERS. Plus PLO.

General NUTTING. Plus PLO, true.

Senator DODD. And in West Managua? [Laughter.]

I presume you do not have the answer to this right off, but I would ask you to get it for the record. I would like to know how many physicians and teachers, aside from the Peace Corps, that we have provided in Central America in the last 3 years as well, if we might get that figure.

[The material referred to follows:]

We have provided funding for various health, education and training programs. We have not sent, however, any physicians or teachers.

Senator DODD. I do not believe I have any more questions at this time. I will have some written questions for you gentlemen. I think most of them are involved directly in the human rights area. But I will submit them to all three of you and would ask you to comment where appropriate.

I thank you very much for being here today. I apologize, in a sense, for how this has occurred, the timing around here. It is not the most efficient way of getting at things. If I have repeated questions that you were asked earlier, I apologize to you for that.

I was getting at the figures with you earlier, Mr. Ambassador. I think the figures rough out to somewhere around $700 million; $700 to $800 million would be a rough total for economic and military assistance for the period fiscal year 1980–83. That is easily two and three times, and I suspect more, than we have spent in the last three or four decades in El Salvador, going back to the forties.

I am not sure that the figures are exactly right, but they are darn close. My point is that it is a tremendous effort. There is a lot of money being spent.

We are not trying to dictate, I do not believe, what Salvador should be doing. That is up to them. I have stated that over and over again. The question is whether or not we are going to support financially

what they decide to do, and that is why these questions become important.

So for my own part, I am going to continue to examine this policy issue. I will say again that the numbers game is depressing to me, because I do not think anyone knows for sure. The policies are the things that are more important to me. I think the effect of what we did in this committee back at the end of May demonstrated what we could be doing were we to decide today as a practical matter that certification was not proper, and that the President or the Secretary of State certainly in 1 month or 2 months could come back and certify it.

You could have come back at a later date and said, well, things are not very good right now but they are getting better. I suspect you would have a better result.

My concern is that we get these blurps right around certification time, and that I would hope that the administration and the Department will monitor as closely as possible activities during the entire period of time, so that we do not end up with figures that look good just before, letters that just squeak in the door just prior to the consideration by this Congress of the certification decision.

Even though it may be unintentioned, the perception is clearly one of trying to put on a good face before going before the Congress. So I look forward to working with you over the next 6 months on this. My hope is we would not have to have a certification process. I look forward to the time we do not need to do this, and that you will not have to come back up here and we do not have to go through it. That is my hope.

I did not get into the negotiation process with you here. That was also a part of the certification process. My hope is that that will be pursued, that every effort will be made to try to engage in a political resolution in El Salvador.

I have this sinking feeling that we are moving further and further away from the political solution and closer and closer to a deeper commitment to a military one. And frankly, if that is the case then I think the regionalization, despite the efforts to lay blame at one doorstep or another, is going to get out of hand. It is not just going to be a conflict in El Salvador or what did occur in Nicaragua, or what could occur in Guatemala, but it is going to inflame the entire region. That is my fear, that within a year we are going to be sitting back here and we are going to be talking about the Central American conflict and not just one in El Salvador.

So my hope is that in the meantime we will take advantage of the process and every effort will be made to move on the political side of this equation, rather than just the military.

On behalf of the committee I thank you.

Ambassador ENDERS. Senator, thank you.

May I make one final comment? I think implicit in the certification process is not only a threat, that if our judgment is that the standards set by Congress and agreed to by the President are not met, that military assistance will not be forthcoming; it is the other way around also, that in the sense of performance and satisfaction, we also will go on supporting and supporting at the level required.

In other words, there is a positive goal for this, too. We cannot only look at this as a one-way street in which we say, if you do not perform according to our standards we will cut you off, if you do perform we will think about maybe assisting you. I think there is an implicit bargain involved in here, which I hope we would all reflect on as we go on with this process.

It is an exercise in persuasion by both parties, I think. And our effort at persuasion is to achieve the goals that have been set out, as well as the security goals, which are not listed in the legislation but which I think are broadly shared.

Senator DODD. Thank you.

This committee is recessed. We will reconvene at 2:30, as I am told by the chairman, for public witnesses.

[Whereupon, at 1:52 p.m., the committee recessed, to reconvene at 2:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. I think that we might call up our panel to the witness table. We have two panels this afternoon. The first will consist of Prof. Thomas Anderson, William Doherty, James Finn, Morton Halperin, and Daniel James. We would be happy to have you take your places at the table.

[Pause.]

The CHAIRMAN. We welcome very much our witnesses this afternoon. I understand that two of them are still over at the House testifying, so they will have to join us when they finish over there.

This morning's session with the administration was a long and intense one, broken up a little by voting. But I think the record is very clear, and once again I would recommend to all members of the committee who were not able to attend the session this morning that they review the transcript of the meeting, because I think it was a very good session.

The administration presented a generally optimistic assessment of the progress that is taking place on each of the five certification goals. They realistically recognize that there is room for greater progress, but they indicated that the trends were positive.

I, too, indicated my overall support for the certification, which is based on intelligence briefings and based on the reports of the talks with the leaders of the present organization, based on the testimony that we had this morning, and other evidence, including the certification.

I recognize that there is need for improvement in the human rights performance and control of violence by security forces, and certainly in bringing to trial the case of the four churchwomen and the land reform worker. But in general, I have not seen evidence that does not support the position that enough progress, enough good faith effort, has been demonstrated to warrant our continuing our support for the Government in El Salvador.

Many of you have different perspectives on these issues. We are anxious to hear your assessment.

The committee is in receipt of a detailed document prepared by the America's Watch Committee/American Civil Liberties Union, that asserts there has been no progress. We have also received and studied the report prepared by the Lawyers Committee on International Human Rights that documents the questions outstanding in the investigation of the murders of the four churchwomen.

Staff and Senators have met with members of the churchwomen's families, and yesterday a lengthy meeting was held with representatives of the Salvadoran unions. In each of these meetings, as today, we seek to hear the evidence presented by the different groups involved in the certification issue and to use that information to make our own assessment of what constitutes sufficient progress in the certification goals.

Senator Helms, do you have any comments?

Senator HELMS. No, sir. Thank you. I would just like to hear from the witnesses.

The CHAIRMAN. Very well, then. Gentlemen, please proceed. Professor Anderson.

Mr. ANDERSON. Would you like me to lead off?

The CHAIRMAN. Yes, if you would, please. To identify you, you are from the Department of History of Eastern Connecticut State College in Windham, Conn.

STATEMENT OF PROF. THOMAS ANDERSON, DEPARTMENT OF HISTORY, EASTERN CONNECTICUT STATE COLLEGE, WINDHAM, CONN.

Mr. ANDERSON. Thank you, Mr. Chairman.

The situation in El Salvador is very complex. However, I think certain things are very clear, and they are, first of all, the land reform has stalled, the civil war has stalemated, and the killings and disappearances which have been a feature of Salvadoran life continue.

The March elections, while valid within their limitations, have not really moved the country closer to peace or reform. To understand the dynamics of the situation, I think it is necessary to go back at least a couple of years.

Until October 1979, the military had unbroken control of the country for about 50 years, and the coup which finally ended the absolute military control in October 1979 brought to power a reformist junta which had the best of intentions of changing the nature of the country. The five-man junta had in mind profound social and economic changes.

But when we look at what happened to that junta, we see part of the problem of El Salvador. Not one of the five is today in the government. Three members of that original junta—Guillermo Manuel Ungo, Roman Mayorga Quiros, and Adolfo Arnoldo Majano Ramos—have all been forced to leave the country and have fled to exile, and of course, in the case of Ungo, have become part of the Democratic Revolutionary Front.

The reason that those three all left was ultimately the realization that the military was not going to turn over real authority to civilians in El Salvador, and the military has not turned over real authority to civilians in El Salvador. Real control remained in the hands of the

military, in the person of Colonel, later General, José Guillermo García, the Minister of Defense. And even Colonel García found it difficult to control some elements of his own military.

The problem, therefore, of an autonomous military has never really been solved in the country. Under José Napoleón Duarte and the second junta, the problem was simply swept under the rug. Duarte and the leaders of the Christian Democratic Party made what they thought was a reasonable compromise with the military. The civilians would be allowed to institute reforms; the military could go on with their war, which was a dirty war against the guerrillas.

And this war, of course, has been characterized by destruction of whole villages; the depopulation of certain parts of the country, and it does not appear anything has happened to change the character of the war.

I personally visited, I should note, Salvadoran refugee camps in January 1981 on the Honduras border and I saw the situation as it was. I have been in El Salvador quite recently. I should also add that I was there for the March elections.

In March 1980, the second junta began a land reform program. This should be seen as part of a serious effort on the part of persons genuinely concerned for the peasantry to create a solution to the age-old problem of inequitable land distribution.

Unfortunately, the whole land reform program was poorly conceived, and some things, like the "land to the tiller" program, were just unworkable. Many courageous persons tried in this land reform program. More than 40 land reform workers were killed. Rodolfo Viera, the head of the land reform program, finally was murdered.

The land reform after Viera's death and the exiling of his deputy, Leonel Gom[illegible] Vides, has fallen on very bad times. It did not need an official mora[illegible]rium. The land reform for all intents and purposes is dead.

There are many indications that the military and security forces have been holding up the land reform which has been instituted. There are even indications that in some cases estates have passed from the oligarchy, through the land reform program, into the hands of the military. The military in El Salvador are beginning to imitate the military in Guatemala in getting lands for themselves personally.

For over 2 years, the Christian Democrats, who were reformists, appeared to be the governing party, but they never really governed. This was dramatically illustrated by the fact that they could not even protect members of their own party. I use the instance of the assassination of Mario Zamora Rivas, which occurred shortly after the Christian Democrats were in power.

Here is an important figure in the party who is assassinated at a meeting in his own house, after an exchange of charges between himself and Maj. Roberto D'Aubuisson in the press. And he was killed in cold blood. No one has ever been punished for this outrage. It caused the Christian Democratic leader, Hector Dada, to leave the country and the junta.

Further outrages have followed—the murder of various Christian Democratic mayors—until you get down to the period just before the election when the son of Antonio Morales Erlich, who is a member of the junta, was in jail in San Salvador on charges of being a rebel. He

was taken out and severely beaten just before the election. And what were they saying when they did that? They were saying, you Christian Democrats do not really control anything; you cannot even protect the son of a member of the junta.

So the message was clear to the Christian Democrats. They did not control anything before the election.

The election itself, which brought Maj. Roberto D'Aubuisson to the presidency of the Constituent Assembly, can be viewed in different ways. My own view, having been there, was on a purely technical level it was a good election. It appeared to be a valid election.

The six parties were allowed to campaign freely. There was a great deal of confusion, of course, as must attend any election done in the atmosphere of a civil war. But the larger than expected turnout of voters voted not out of fear of reprisal, I believe, but rather out of a sense that this would bring peace to the country.

I do not believe, however, that their hopes have been realized. One reason was the spectrum which participated in the election was from the right-center—the Christian Democrats, who had been purged of their own more liberal members, all the way over to the extreme right of Roberto D'Aubuisson.

And it was almost inevitable in a proportional representation system that the five parties to the right of the Christian Democrats would have enough votes to be able to combine against them and form a coalition of the Party of National Conciliation and D'Aubuisson's ARENA party to run the country. And that is indeed what happened.

So the stage was therefore set for an outcome which did not reflect the will of most Salvadorans—an assembly dominated by ARENA and the Party of National Conciliation, the two groups dedicated to continuation of a dirty war against the rebels.

The military in El Salvador since the election is in an ambiguous position. They were still powerful enough so that General García was able to impose his own candidate for provisional president in the person of Dr. Alvaro Magaña. But it should be pointed out that the Constituent Assembly is in theory a sovereign body and therefore the president of the Constituent Assembly is really more powerful than the provisional president of the republic. And the presidency of the assembly is very likely, as it was in Honduras, to be a springboard to the presidency of the country.

The military is therefore in a weaker and more ambiguous position than it has been accustomed to over the last 50 years. The chief reason for this is the inability of the military to win the civil war, despite efforts by the United States to give them aid and training. Every day the war goes on, the prestige of the military is weakened.

Frustrated and desperate to assure its institutional survival, the military is likely to increase the level of violence with which it conducts the war, and might even be tempted toward a coup. On the other hand, the nonmilitary forces of the right, the paramilitary organizations—the White Warrior Union, the various groups for which Mr. D'Aubuisson is generally regarded as the spokesman—have gained in power and prestige and now share a role with the army almost equal to the power of the military establishment itself. Their vigilante activity is therefore likely to increase.

It should be pointed out in the last analysis that the situation in El Salvador would be desperate if there were no civil war at all. There simply is not enough land and resources to go around, and no amount of land reform can solve that problem. The gross national product continues to fall and this fall is reflected in the misery of the masses of the people.

Only a total economic transformation can save El Salvador from a state worse than that of the present, and this transformation can only be attained in an atmosphere of peace achieved through reconciliation, not through force of arms.

Thank you.

[Professor Anderson's prepared statement follows:]

PREPARED STATEMENT OF PROF. THOMAS P. ANDERSON

The situation in El Salvador is extremely complex, however certain facts appear to be clear: the land reform program has stalled, the civil war is stalemated, killings and disappearances continue, and the March elections, while valid within certain limitations, have not moved the country closer to peace and reform. To understand the dynamics of the present situation it is necessary to recall some of the events of the past several years.

Until October 15, 1979, the military had been in almost unbroken control of the country since the end of 1931. The October coup that ousted General Romero was the work of reformist officers within the army, combined with prominent opposition politicians and the faculty of the Catholic University. The five member junta which was subsequently established had in mind profound social and economic changes. However, of these five, not a single one is in government today. Three, Guillermo Manuel Ungo, Roman Mayorga Quirós and Adolfo Arnoldo Majano Ramos, have been driven into exile. The first junta resigned in early January 1980, precisely because it discovered that it did not have the authority to control the armed forces of the country. Real control over the military was in the hands of Colonel (later self-promoted to General) José Guillermo García, the minister of defense at that time, who continues to hold this position until the present moment. Even Colonel García found difficult to control such powerful senior officers as Col. Eugenio Vides Casanova, chief of the National Guard.

The problem of an autonomous military has never really been solved. Under the second junta, and the subsequent period in which José Napoleón Duarte was president of the junta, the problem was simply swept under the rug. Duarte and the other leaders of the Christian Democratic Party made what they thought was a reasonable compromise with the military. The civilians in the government would be allowed to institute reforms while the military would be free to continue a "dirty war" against the rebel forces. This war has been characterized by military destruction of whole villages, the total depopulation of large parts of the northern departments and mass executions. Nor does it appear that United States training has markedly changed the character of the war.

In March of 1980, the second junta began a series of reforms the most important of which was the land reform. This should be seen as a sincere effort on the part of persons genuinely concerned for the peasantry to create a solution to the age old problem, inequitable land distribution. Unfortunately, the whole land reform program was poorly conceived and some sections, such as the "Land to the Tiller" program, unworkable. Many courageous persons worked on the land reform and over forty agents lost their lives, killed by irate landlords, right-wing extremists or by the rebels. In January 1981, Rodolfo Viera, the director of the land reform was killed. Those who attempted to take his place were either driven into exile or killed. The land reform did not need the official moratorium imposed by the Constituent Assembly; it was already sabotaged. There are indications that many in the military and security forces desired the failure of the program and took part in the killings of agrarian reform workers. Further, it now appears that many military men have been taking advantage of the confusion surrounding the land reform to gain some estates for themselves. In this they are imitating the Guatemalan officer corps, which has been taking over land for more than a decade.

While for over 2 years the Christian Democrats appeared to be the governing party, and were able to put through such schemes as the land reform, in reality the party and its leaders had little control, and were not even able to protect party officials. This was dramatically illustrated in February 1980. Major Roberto D'Aubuisson had accused the prominent Christian Democrat Mario Zamora Rivas of working for the guerrillas. Zamora promptly responded with a law suit, but on the night of February 22, while a meeting was in progress at Zamora's house there was a raid by rightist gunmen who shot Zamora in cold blood. No one was punished for this outrage. This caused the Christian Democratic leader Hector Dada to quit the junta and go into exile, and caused the murdered man's brother, Ruben, to join the Democratic Revolutionary Front. Further outrages followed periodically with the murders of party officials and local mayors. An incident which took place just before the March 1982 elections, and which was largely overlooked in the North American press illustrated very clearly the impotence of the Christian Democrats. The son of Antonio Morales Erlich, the number two man in the party and a junta member, had been held for some time in the capital for being a member of the rebel forces. Shortly before the election he was taken from his cell and severely beaten. The message was clear: If the Christian Democrats could not protect the son of Morales Erlich, what power did they have? In El Salvador, more than in most countries, power has traditionally come out of the barrel of a gun, and during the last 2 years such power as has existed has been shared by the military and the rightist death squads, whose most prominent spokesman and defender has been Roberto D'Aubuisson.

The election which has brought Major D'Aubuisson to the presidency of the Constituent Assembly can be viewed in different ways. On a purely mechanical level it appeared to most observers to be a valid election. The six parties which chose to participate were allowed to campaign freely and though a good deal of confusion must attend any election which takes place in the midst of a civil war, the election was fairly well organized. Nor does it appear that the majority of those who turned out were motivated chiefly by fear of reprisal. The larger than expected turnout of voters voted because every party and the central election headquarters assured them that their votes would be votes for peace. It may be that the vote count was later inflated, but it is probable that about 1,200,000 voters actually participated and it is also probable that the seats assigned in the Constituent Assembly genuinely reflected the votes. On another level, the election was doomed to produce results which would not lead to a lessening of violence. All the parties stood to the right of the Salvadoran poltical spectrum. The Christian Democrats, the most moderate of the parties engaged, had been shorn of their more liberal elements. Against them were five parties which included the old vehicle of the military dictatorship, the Party of National Conciliation, and, on the extreme end of the spectrum, Roberto's D'Aubuisson's ARENA party. In this contest the Christian Democrats were doubly handicapped: In a system of proportional representation they were running against five parties likely to combine against them, and they were running on a record of 2 years of weakness, social and economic disintegration and continuing civil war. The stage was therefore set for an outcome which did not reflect the will of most Salvadorans; an assembly dominated by ARENA and the Party of National Conciliation, two groups dedicated to the continuance of a "dirty war" against the rebels.

The military in El Salvador is still powerful enough that General García was able to impose his own candidate as the provisional president of the republic, Dr. Alvaro Magaña, but it should be pointed out that the Constituent Assembly is theoretically a sovereign body and its president is in many ways more powerful than the provisional president. Further, the presidency of the assembly is a likely springboard to the presidency of the republic, as recent events in Honduras demonstrate.

The military is therefore in a weaker and more ambiguous position than it has been accustomed to over the last 50 years. The chief reason for this is its inability to win the civil war, despite massive amounts of United States aid and training. Every day that the war goes on the prestige of the military is weakened. Frustrated and desperate to assure its institutional survival, the military is likely to increase the level of violence with which it operates, and it may be driven to still another military coup. On the other hand, the para-military forces of the extreme right see themselves in a stronger position than ever now that the assembly's presidency and several key ministries are controlled by ARENA. Their vigilante activity is likely to increase.

It should be pointed out that the situation of El Salvador would be desperate even without the civil war. The very ferocity of the struggle waged by both sides is due to the realization that there are simply not enough lands and resources to go around in this agrarian land. No amount of land reform can solve the problem when there is one Salvadoran for every acre of land in the country, including mountainsides and wastelands. The economic situation can only get worse. The gross national product continues to fall and this fall is reflected in the misery of the masses of the people. Only a total economic transformation can save El Salvador from a fate worse than that of the present, and such a transformation can only take place in the atmosphere of a peace achieved through reconciliation not through force of arms.

Senator HELMS. The chairman had to absent himself, and on top of that we have a roll call in progress on the Senate floor. So if you will bear with the temporary chair, I would appreciate it.

[Pause.]

Senator HELMS. Thank you very much, Professor Anderson.

Mr. Finn.

STATEMENT OF JAMES FINN, FREEDOM HOUSE, NEW YORK, N.Y.

Mr. FINN. Thank you, Senator Helms.

I am speaking not only for myself, but even more as a representative of Freedom House, where I am editor of "Freedom at Issue," which is our journal. I have previously been an editor of "Commonweal," a Catholic weekly journal of opinion, and I have a long-standing interest in the moral dimension of critical issues and decisions.

I would like to say a couple of words about Freedom House, to provide a framework for evaluating the comments which I am making in the name of Freedom House. Freedom House is a human rights organization that places freedom in the broader context of national policy, long-term objectives, and geopolitical concerns. We believe that civil rights and equal opportunity at home and advocacy of human rights abroad are ultimately dependent upon the power and prestige of America, as well as the human values which we espouse and practice ourselves.

We are known as the organization that regularly assesses political rights and civil liberties around the world. For over 40 years, Freedom House has reflected the broad center of the American political spectrum, liberal and conservative Democrats, Republicans, Social Democrats, and Independents. It is from the perspective that is provided by that background that we regularly examine and evaluate conditions not only in our own country, but in countries around the world.

Among the areas in which we have concentrated our attention in recent years is the Caribbean Basin, and we have a particular program which is devoted to the Caribbean Basin. We have had for years a continued interest in the countries of Central America. As part of that commitment, our organization, our board of trustees, our membership, has continued to monitor the conditions in El Salvador.

Previous to the elections of March of this year, we sent a five-member team there to monitor the preparations and then the election itself, which we regard as an extraordinary event in the history of El Salvador. Previous to that we published a pamphlet on El Salvador which gives a history of the conditions of that country and the growth

and development of the particular political parties that have played such a role in its present condition. That pamphlet has been widely distributed and widely praised.

We have participated extensively in public debates in this country in the media about conditions in El Salvador and we have based our own statements upon our examination of what has taken place there, upon conversations with the campesinos, with the unions, and with the people in the church. We had extensive conversations, for example, with Bishop Pedro Aparicio, and we have published in our journal the statements he has made about how the Catholic Church of El Salvador views the conditions there.

On the basis of such activities and extensive report which I have attached to my statements, the executive committee of Freedom House has prepared a formal statement which I would like to read:

The Executive Committee of Freedom House believes that the United States should renew its economic and military assistance to El Salvador. We have reached this conclusion after examining:

First, the extensive report of our five-person team that monitored the March elections in that country, and having read our staff appraisal of criticism of that electoral process; that criticism was neither based on any substantive evidence nor compelling in its argumentation;

Two, we have evaluated the progress of the land reform program in El Salvador, taking into account the criticisms of that program, some of which we share;

Three, we have examined the steady advance being made in establishing a civilian-run government, including a judiciary;

Four, we have examined the El Salvador government's efforts, still with limited success, in reducing the level of violence in that country.

These four basic criteria determine whether progress is being made toward the establishment of a democratic society in El Salvador. These criteria must be adequately fulfilled before the United States renews its support of the government of El Salvador. We believe these criteria are being addressed at the present moment.

We believe the United States should continue to warn the government of El Salvador that our renewed assistance is conditioned on further, expanded efforts by the recipient government to develop a democratic society.

The massive turnout in the March election clearly demonstrated the electorate's broad desire for peace to be achieved through peaceful, not violent, means. The election we think was a decisive defeat for those who rejected the electoral process. Consequently, the preparation of a constitution, planning of general elections in 1983 or 1984, and the further development of the judiciary and a civilian government based upon the realities of the March election, should continue apace.

Two, despite the elections, El Salvador still suffers serious problems of human rights violations, security, lawlessness and economic decline. We believe active, positive steps should be taken to renew a dialogue with ideological forces outside the society. Those within the society who resort to vigilante violence must be restrained.

Three, we are encouraged by the public statements of Salvadoran military officials, various party spokesmen, and President Alvaro Magna in support of the economic and social reforms initiated before the March elections, despite considerable pressure from certain private sector individuals and officials who sought to terminate those reforms.

Under the land reform program, since the election 5,000 provisional titles have been given to peasants and another several hundred definitive titles have been awarded in public ceremonies. This compares favorably with the pre-election record. However, some 3,000 to 7,000 peasants have been evicted from lands previously assigned them, but for which titles had not yet been issued. The United States should, therefore, urge the Salvadoran government to clarify the present confusion over the present and future implementation of the land reform program.

This program is complex, and we recognize it to be so. It involves the urgent need to plant cash crops without delay in order to secure desperately needed

income for the economy. Changeovers in cash-cropland ownership create uncertainties that may delay or eliminate cash crop planting. Yet land reform remains a social and political necessity and should proceed carefully.

After initial alarm over a possible monopolization of government by the rightist parties, the Salvadoran government has embarked on the difficult task of creating viable political institutions composed of forces representing differing and competing ideological points of view. Severance of American aid at this time, particularly after the Salvadoran people demonstrated overwhelmingly their commitment to the electoral process, would foreclose the democratic option for the future and serve only to polarize the nation further.

That concludes the formal statement that was adopted by the executive committee of Freedom House. The statement which is attached to this, which I would like to have inserted into the record, analyzes in some detail the election, the land reform movement, the progress and lack of progress in human rights, the strengthening of the democratic process, and the consequences that would follow if aid were given—or were cut off at this particular point.

With that statement inserted in the record, I would like to conclude my comments.

[Mr. Finn's prepared statement follows:]

PREPARED STATEMENT OF JAMES FINN

My name is James Finn and I am speaking today as a representative of Freedom House. I am editor of Freedom at Issue, our bimonthly journal. I have been an editor of Commonweal, a weekly Catholic journal of opinion and I have a long-standing interest in the moral dimension of political issues.

Freedom House is a human rights organization that places freedom in the broader context of national policy, long-term objectives in terms of human rights, and geopolitical concerns. We believe that civil rights and equal opportunity at home, and advocacy of human rights abroad are ultimately dependent upon America's power and prestige, as well as its human values. We are known as the organization that regularly assesses political rights and civil liberties around the world. For over 40 years, Freedom House has reflected the broad center of the American political spectrum, liberal and conservative Democrats, Republicans, Social Democrats and Independents. It is from the perspective provided by this approach that we examine and evaluate conditions in this country and in countries around the world.

Freedom House has been generally committed to the Caribbean Basin and has a program directed specifically to its concerns. As part of that commitment it sent a five-member team to monitor the preparation and the conduct of the March 28 election in El Salvador. We have also published a pamphlet on El Salvador that has been widely distributed and widely praised. We have participated extensively in public debates on the grave issues concerning El Salvador. Bishop Pedro Aparicio, a vice-president of the Episcopal Conference of El Salvador, spoke at Freedom House about the conditions in El Salvador and we published his views in our journal, Freedom at Issue. On the basis of such activities and our extensive report that supports the certification of further assistance to El Salvador the Executive Committee of Freedom House adopted a formal statement that I would like to read:

The Executive Committee of Freedom House believes that the United States should renew its economic and military assistance to El Salvador. We have reached this conclusion after examining:

(1) The extensive report of our five-person team that monitored the March elections in that country, and having read our staff appraisal of criticism of that electoral process; that criticism was neither based on any substantive evidence nor compelling in its argumentation;

(2) The progress of the land-reform program in El Salvador taking into account the criticisms of that program, some of which we share;

(3) The steady advance being made in establishing a civilian-run government, including a judiciary;

(4) The El Salvador Government's efforts, still with limited success, in reducing the level of violence.

These four basic criteria determine whether progress is being made toward the establishment of a democratic society in El Salvador. These criteria must be adequately fulfilled before the United States renews its support of the Government of El Salvador. We believe these criteria are being addressed at the present time.

We believe the United States should continue to warn the Government of El Salvador that our renewed assistance is conditioned on further, expanded efforts by the recipient government to develop a democratic society.

1. The massive turnout in the March election clearly demonstrated the electorate's broad desire for peace to be achieved through peaceful—not violent—means. The election was a decisive defeat for those who rejected the electoral process. Consequently, the preparation of a constitution, planning of general elections in 1983 or 1984, and the further development of the judiciary and a civilian government based upon the realities of the March election, should continue apace.

2. Despite the elections, El Salvador still suffers serious problems of human-rights violations, security, lawlessness and economic decline. We believe active, positive steps should be taken to renew a dialogue with ideological forces outside the society. Those within the society who resort to vigilante violence must be restrained.

3. We are encouraged by the public statements of Salvadoran military officials, various party spokesmen and President Alvaro Magana in support of the economic and social reforms initiated before the March elections, despite considerable pressure from certain private-sector individuals and officials who sought to terminate the reforms. Under the land-reform program, since the election, 5,000 provisional titles have been given to peasants, and another several hundred definitive titles have been awarded in public ceremonies. This compares favorably with the pre-election record. However, some 3,000–7,000 titles had not yet been issued. The United States should, therefore, urge the Salvadoran Government to clarify the present confusion over the present and future implementation of the land-reform program.

This program is complex. It involves the urgent need to plant cash crops without delay in order to secure desperately needed income for the economy. Changeovers in cash-cropland ownership create uncertainties that may delay or eliminate cash-crop planting. Yet land-reform remains a social and political necessity and should proceed carefully.

After initial alarm over a possible monopolization of government by the rightist parties, the Salvadoran Government has embarked on the difficult task of creating viable political institutions composed of forces representing differing and competing ideological points of view. Severance of American aid at this time, particularly after the Salvadoran people demonstrated overwhelmingly their commitment to the electoral process, would foreclose the democratic option for the future and serve only to polarize the nation further.

That is the statement of the Executive Committee of Freedom House. I would like to enter into the record a developed report which supports this position and respond to any comments.

A Freedom House Report

IN SUPPORT OF CERTIFYING FURTHER ASSISTANCE TO EL SALVADOR

I. The March 1982 elections

A. The Prelude.—The months prior to the March 28th elections were marked by a dramatic upswing in political violence. Some 361 Salvadorans were murdered in February in politically-related deaths and the month of March saw another 438 killed as the political campaigning came to a close. At one point the government ordered all political campaigning to cease as it had become acerbic and violent. Several dozen Christian Democratic workers and candidates were assassinated, the victims of right-wing paramilitary groups, and the rightist candidate Roberto d'Aubuisson was wounded in an assassination attempt credited to the FDR–FMLN guerrillas.

Prior to the elections, the FDR–FMLN forces called for a national insurrection and embarked on a concerted campaign in the international media and over its clandestine radios to minimize the voter turnout in El Salvador. Since January, the insurgent forces supplemented their rhetoric with an escalation in their violence. Their primary goal was to disrupt the means of transportation and

gas supplies as well as the communications system needed to record the vote tallies. They destroyed over 250 busses and frequently threatened, sometimes killed, busdrivers in front of their passengers to intimidate the voters.

On the Monday before the elections, the FDR–FMLN succeeded in blowing up 20 buses and managed to destroy the fuel supplies for Morazan Department. On March 1, Radio Farabundo Marti, the organ of the EPL headed by Cayetano Carpio, ordered people not to go to the polls, but to construct barricades across the roads instead. Throughout this period, the guerrilla forces launched offensives in the Usulutan, Chalatenango and Morazan Departments.

Despite assurances given by FDR president Guillermo Ungo on March 21st that no special action would be taken against the voters or to interfere with the elections, the opposite turned out to be the case. The Central Electoral Commission headquarters in San Salvador was attacked only nights before the vote and fighting persisted for days in the Mejicanos neighborhood of the capital. Voting was interrupted in Usulutan, the nation's fifth largest city, because of fierce street fighting between the guerrillas and government forces. Some 64 small municipios could not vote on March 28th because of guerrilla activities. As Arturo Rivera y Damas, the acting archbishop of El Salvador, remarked later in an April 12 interview in La Stampa, an Italian newspaper, "I believe if there was any pressure (on the voter) it was not from the government but from those who did not want the election."

Before the Freedom House observer mission arrived in El Salvador about a week before the election, there was considerable doubt whether the election would even be held. Press accounts suggested that the Salvadoran military would not permit the elections and postpone them indefinitely. Others contended that the elections would have a low turnout because most Salvadorans considered voting a farce because of prior experiences. On this point, scholars differ. Many elections in the past had indeed been fairly free and Salvadoran turnouts often were in the 800,000 range. A Costa Rican firm, which had polled the public for four months, concluded that roughly 75 to 80 percent of the public wanted to vote. Still others argued that the election would not be representative because of the boycott by the FDR–FMLN.

In general terms, the election became a referendum on itself: the electoral mechanism would be observed for its fairness and correct implementation; and the comparative strengths of the political and guerrilla forces in the country would finally be tested. In an interview with the Freedom House observer mission before the elections, Jorge Bustamente, the head of the Central Electoral Commission, stated in his view the elections would be a success simply if there were more valid ballots than spoiled ones. (The habit of spoiling a ballot has been the traditional Salavadoran way of registering a protest vote against the government and the competing parties.) Salvadoran Government and American Embassy estimates placed the potential turnout at 300–500,000 votes or some 300,000 below the largest Salvadoran turnout. Most observers felt at that time that a 500,000 voter turnout would be good, a 750,000 turnout an excellent one.

The electoral campaign itself demonstrated a limited but still a wide-range of differing political positions. Sometimes campaign appeals by one party varied from region to region. For instance, the newly formed ARENA party campaigned effectively in war-torn areas on the peace issue, urging a more violent campaign against the guerrillas. In other areas, such as Santa Ana in the western part of the country, where land reform had significantly reduced the political violence, ARENA tried to pre-empt the reform issues from the Christian Democrats and argue they would make them more beneficial to the recipients.

The Christian Democrats, hampered by a lack of campaign funds and the inability of President Jose Napoleon Duarte to wage a partisan campaign, stumped on the reform issues, the need for national unity, and against the re-emergence of the right as a political power in the country. The PDC as the titular incumbents were faced with defending a poor economic record and the fact the war continued after three years of their sharing power with the military.

The National Conciliation Party (PNC) which had run the country for 20 years, campaigned on their traditional power base—the conservative rural population and the remains of the oligarchic landowners. A conservative party with statist views on economics, it could claim originating the agrarian reform concept and having offered the Salvadoran people two decades of relative stability. The small moderate Democratic Action Party (AD) composed of the new middle-class opposed to the oligarchy appealed to a small urban group of businessmen and university intellectuals.

Pre-election polls and our own interviews and investigations revealed that the Salvadoran voter saw two basic issues in the election—peace and employment—both elusive entities in Salvadoran life. Voters maintained that voting was a civic obligation, but did not generally fear any penalties if they didn't vote. The press did report some fear of reprisals by government forces or paramilitary groups for not voting. During the polling process itself, there were some expressions of fear about possible guerrilla retaliation.

Rumors of pre-election intimidation abounded. In some areas in the western part of the country, especially near large haciendas, ARENA appeared to have the assistance of the local military in arranging rallies, where some voters felt compelled to attend. In the eastern part of the country, where gasoline and transportation were in short supply, claims were made by the rightist parties that the Christian Democrats benefitted from having access to government cars and vehicles for their rallies. However, comparing the final results of the election in these areas with the reported incidences of intimidation, it appeared that coercion—subtle or overt—had a minimal, if not opposite effect on the voter.

Significantly, the major bias of the 100 odd observers and the 750 journalists, who were de facto observers, was for the Christian Democrats or the guerrillas. Many observer teams, including our own, were skeptical about the prospects for a good turnout and feared a right-wing victory.

B. The Election.—The results of the March 28th elections were notable in the sense that party strengths, or more properly political attitudes of the electorate, remained fairly stable in comparison with elections since the mid-1960's. The conservative to extreme rightist parties running in the 1982 election, with the exception of the AD party, were all derived from some wing of government during the Romero era. Therefore, it should not have surprised anyone, as it did, that the results by party followed the traditional voting patterns of the past, even though some of the players had changed.

For example, the Christian Democrats netted some 40 percent of the vote. In the relatively free and fair elections of 1968, the Christian Democrats received 43 percent of the vote, the further left MNR nearly 4 percent and the conservative parties 53 percent. In the 1972 presidential elections the united front of Christian Democrats and the parties to the left polled about 43 percent and the more conservative parties 57 percent. Any drop in Christian Democratic support bases may be explained either by the inability of some Salvadorans in rural areas to vote or by a slight defection of some younger Christian Democrats to the FDR. But neither assumption has sufficient proof.

The turnout of 1,485,185 Salvadorans was the most astonishing surprise, considering the relatively conservative estimates from the American and Salvadoran Governments. Throughout the country on election day, voters ignored the guerrilla threats, drove in full truckloads or walked several kilometers to the polls. Large lines and hours-long waits characterized the voting in polls we visited. In some polling places such as Santa Ana and Morazan, a frantic crush to vote characterized the proceedings, while in other polling places such as Sonsonate a festive atmosphere prevailed.

The electoral commissions efficiently and accurately carried out their tasks. Elaborate measures such as a multiple system of reporting tallies were adopted to guard against fraud. The mobile voting box, a source of ballot box stuffing in the past, was eliminated. At the polling places, observers from many parties were present, even though in many areas such observers flaunted their party affiliation. This practice seemed to apply in equal numbers to all parties. The time to vote, later a subject of controversy, was substantially less than the 1½ to 2 minutes originaly calculated by the Central Electoral Commission.

The final percentage of the Salvadoran electorate who voted is subject to wide fluctuations because of the discrepancies in population figures. The Freedom House report using a population base of 5 million or 2.4 million voters minus emigration concludes that from 62 to 68 percent of the voting population exercised their right. Using World Bank figures from 1980 of 2.1 million and subtracting subsequent emigration, the percentage of voters would reach into the high 80 percentile. In any event, the vote count was significant in that it was almost double the largest vote in Salvadoran history.

As the growing violence and the rise of militant left groups indicates, the thwarting of democratic aspirations in the 1977 election, widely regarded as fraudulent, should have been transferred into some type of strength during this election, if only to lower the turnout. The Salvadoran people rejected overwhelmingly the calls for an election boycott.

Traditionally, the militant left could have organized a campaign for voters to cast spoiled or null ballots. Significantly, 11 percent of the final tally was null or blank, another 1 percent was discounted because the voter marked a party unclearly. It has generally been conceded that about 9 percent of the voters or 5.5 percent of the adult population cast a protest vote, most specifically in urban areas. Combined with those refusing to vote, this suggests a 10 to 15 percent support for the militant left, a not surprising number considering the country's past political history.

These estimates still could be on the high side. Those who wanted to vote but could not because of guerrilla activity or those who cast a protest vote from the right would adjust this figure. Also, the apathetic voter, who exists in all countries, has not been considered in this equation.

C. Criticisms of the election.—Recent criticism of the election as voiced in articles in the New York Times (June 3–6) center on the high turnout of voters. These charges, now supported by more academic arguments, represent the sophistication of the FDR–FMLN complaints immediately after the elections.

During the election count itself, Prensa Latina, the Cuban newsservice, stopped reporting the count after a large turnout became evident. During the 3-hour delay in voting, the newsservice returned to announce that the delay in voting was a sure sign of fraud. Three days after the elections the FMLN on Radio Venceramos maintained that the huge turnout was due to the government withholding paychecks unless public officials voted. Again, the broadcast emphasized that the delay in voting was a sign of fraud. In an interview with Italy's "La Repubblica" on April 8th, Guillermo Ungo outlined what would become the FDR–FMLN's final position on the election. He affirmed that the percentage of vote per party was accurate in terms of Salvadoran politics but questioned the large turnout.

A truer estimate of the left was the Managua broadcast on March 30 of an FMLN communique previously read over Radio Venceremos on March 29th, which shows the turnout took the guerrillas off-guard. The communique stated: "The true people did not vote. The workers, the peasants, the students, the intellectuals and the market women, who make up the majority of the people, did not vote. Many of them fought in our ranks . . . Since March 26, the FMLN forces have stepped up their offensive military activities, display their combative capacity, initiative, high morale, and revolutionary spirit." In other words, the FDR–FMLN, since they began the campaign to disrupt the elections, overestimated their support as they did during the "final offensive" of last year.

Subsequent reports, particularly those in early June in the New York Times, have cast doubt on the turnout of the election and not on the results. The first argument as offered by Loyola University Professor William Sheehan, in a piece entitled "Salvador Vote Inflated, Study Is Said To Find" argues that the results of the elections are accurate insofar as the party tallies are involved but quotes a University of Central America study which maintains that it was mathematically impossible for nearly 1.5 million to vote if the voting time was a projected three minutes. The mathematical argument has never been advanced with a shred of empirical evidence suggesting that it actually took that long for the average Salvadoran to vote.

Since it was very difficult to organize at a grassroots level a conspiracy to rig the turnout without tampering with the actual results, the study concludes that the three-hour lapse in time in the voting was the equivalent of Nixon's missing 18 minutes on his tapes. During this down-time on the computer, the Central Electoral Commission allegedly inflated the turnout.

There are a number of improbables in the scenarios suggested by the study and the follow-up articles by Times reporter Raymond Bonner. First, most of the polls were open 11 hours in the country, not the six to eight as the study suggests. Second, a voter never went through the process of offering identification, getting listed in the voter registry, and then getting the inky-pinky stamp one at a time. In the polling places we observed, only a few mesas used this approach, and generally, only at the beginning of the voting; the others were an assembly line process doing several functions at once. Voter processing from initial step-up to the table to completing the vote took anywhere from less than 30 seconds to a high of 90 seconds, in places we observed. Before the election, albeit anticipating a low turnout, the Central Electoral Commission estimated that it would take an estimated 90 seconds to vote, not the three minutes the critics maintain. In subsequent corrections of the study, the seconds level was reduced to the CCE's figures and roughly conclude that maybe the vote was some 200,000 votes too high.

From the reports printed in the New York Times and the complaints uttered by

the FDR-FMLN spokespeople, a fraudulent turnout demands a central conspiracy by a wide range of actors, some of whom during the campaign allegedly shot at one another. This conspiracy would involve all six parties, many of whom had diametrically opposed ideologies and had suffered violent attacks from other parties, electoral officials at every level, the poll watchers who were either chosen at random or from party lists, the entire electoral commission, including the computer technicians as well as the international observers who stayed at the headquarters while the computer experienced the down-time. At the same time, the telegraphic count as conveyed through the military-controlled lines would have to seriously deviate from the tallies sent by messenger from each polling place and also contrast with each department's count.

There are compelling arguments, besides sheer impracticality, against this scenario. None of the over 100 observers and 750 journalists reported anything but an overwhelming turnout that challenged even their preconceptions. On-site views of endless lines, sometimes numbering in the tens of thousands, registered a great credibility as to the size of the turnout. In all subsequent observer reports ranging from the OAS report to the official findings of the American observer team, there were absolutely no reservations expressed about the size of the turnout.

More practically, international observers and foreign diplomats were present during the down-time of the computer. First, the vote was stopped on public television and at election headquarters because the telegraph systems overloaded and the results could not be registered in time. Secondly, when the telegraphic vote did not correspond to the messenger's tally, the computer kicked out the results forcing commission members to compare the tallies by hand and re-feed them into the computer. In analzying the difference, according to Jorge Bustamente, the margin of difference was 1 percent of the vote. International observers with access to the official tallies and the mesa tallies did spot checks and found no discrepancies on the computer printouts recording the electoral results.

In later New York Times articles, notably the June 6th article written by Raymond Bonner, charges have been made that computer printouts of certain voting stations, although extremely small, revealed disparties in numbers of null votes. In San Idefonso and in Suschitoto, Cuscatlan, voting places reported all ballots as null. In such places, fraud was suspected and the electoral officials were instructed that a vote should be cancelled if it was suspected that fraud had been committed. In Aguilares and El Paisnel, San Salvador, identical vote counts for each voting table were reported because both areas were in the zone of guerrilla fighting and the Electoral Commission divided a single vote tally into the number of mesas, thus creating the artificially similar voting. To date, other examples of alleged discrepancies at specific polling places have not surfaced.

Perhaps, the most telling aspect of these criticisms of the huge turnout is that they are based on a report entitled "Las Elecciones y la Unidad Nacional" appearing in Central American Studies published by the University of Central America. This research report by the Jesuit-run university simply mirrors their previous report done before the election that predicted massive fraud. The report in no way, shape or form can be considered a scholarly product since it fails to make any use of the computer printouts available from the Central Electoral Commission, the opportunity provided by observing the electoral process, or any other empirically derived data.

What was not published about the report was its own peculiar reasoning toward the elections. Except for the speculation on the mathematical impossibility of the voter turnout, the report rested on a series of propositions or "ten theses" which were aimed at discrediting the idea of elections in El Salvador. Among these propositions were the notion, first of all, that elections were not necessary anyway, the elections were demanded by the United States and therefore their results would only suit American interests; the elections didn't occur because the conditions for *real* elections were not present; the elections did not address the real problems of the country, therefore they are fraudulent; and, as a consequence, the only solution for El Salvador was to urge the FDR-FMLN to continue fighting so as to force a negotiated settlement. In other words, the report quoted as authoritative by the New York Times was simply a manifesto in more abstract language in favor of the FDR-FMLN and a political settlement of the war.

Partisan critics aside, the March 28th elections must be viewed as substantially free and fair, marked by a turnout nearly twice that of any previous election. Nearly three months have passed since those elections have occurred and no

substantive charges of fraud or tampering have appeared from either the participants or those with access to the data. On the contrary, all six Salvadoran parties who competed in the elections, despite serious disagreements in the Constituent Assembly debates on other issues, have refrained from challenging the results of the elections. In a private conversation with the Christian Democratic mayor of San Salvador the night after the election, he said that *at most* his party lost one seat because of any fraud.

What is clear from the March 28th elections is that the Salvadoran people did not heed the call by the guerrillas to embark on a national insurrection, despite frequent attempts by the FDR–FMLN at intimidation by acts of violence and constant propaganda broadcast over the clandestine radios. The concerted effort by the FDR–FMLN forces to physically limit the voter turnout was a failure in all but a few departments such as Usulutan, Chalatenango and Morazan. Although the FDR chose not to run in the elections, they had the traditional option of encouraging spoiled ballots, the accepted form of a protest vote. Even here, their attempts were a failure. Of all the votes cast, only 9 percent can be considered votes for the radical left. From the protest vote and other projections, one can conclude on the charitable side that the FDR–FMLN may enjoy from 10 to 15 percent support among the population, a far cry from their statements of massive support throughout the country.

The elections, then, must be considered a fair indicator of the Salvadoran people's will and is a positive step toward the democratization of the country. Democratic processes of goverance appear to be, at least, formally accepted by the vast majority of Salvadorans. However, it is necessary that the competing political parties continue their peaceful competition within the forum of the newly-established Constituent Assembly, rather than resort once again to political violence, the persistent scourge in Salvadoran life.

II. The question of land reform

During the electoral campaign, all Salvadoran parties—whether their economics were state-oriented or laissez-faire—acknowledged to the Freedom House observer team that the agrarian reforms inaugurated in 1980 were irreversible. On April 27, the newly-formed Constituent Assembly issued its Decree No. 3, which stated emphatically: "It is advisable to maintain and perfect the agrarian, bank and foreign trade reforms expressed in the 15 October 1979 armed forces proclamation for the purpose of achieving an equitable distribution of the national wealth." The adoption of the 1962 Constitution, which contained provisions prohibiting the confiscation of private property, and the May 19, 1982 amendment suspending land reform on the economically crucial cotton, coffee, and other lands provoked considerable overseas coverage claiming the much vaunted land reform was dead.

In our earlier advisory on El Salvador entitled, "What We Believe About El Salvador," we viewed this extensive land reform program as the centerpiece of all the reform efforts after the 1979 coup. This program, the most thorough in Latin American history, was aimed at redressing the long troubled history of El Salvador's rural and landless population. Land hunger and overpopulation have been constants throughout El Salvador's history, playing dominant factors in social violence and domestic unrest. In 1969, they even served to provoke a war between Honduras and El Salvador.

The need for agrarian reform has been a persistent theme among reformist circles in Salvadoran politics since the 1930's. El Salvador has the highest population density in Latin America and one of the highest in the developing world, some 570 people per square mile. Since the 1930's, farming lands have been monopolized by fewer than 2 percent of the population, who owned over half the arable land and often sold the peasants' working land to others in the oligarchy. From 1960 through 1975, as El Salvador's population grew at some 3 percent a year, the number of landless laborers increased from 12 percent to 40 percent of the rural population, or some 150,000 families. More than half the rural labor force remained unemployed for over two-thirds of the year and, according to USAID estimates, some 740,000 people or about 35 percent of the rural poor depended exclusively on agricultural labor for their livelihood.

The agrarian reform implemented in the spring of 1980 was aimed at broadening the social, economic and political base of El Salvador in a manner which would also increase agricultural production, the backbone of the country's economy. It is therefore as much a part of the democratization process as the elections held March 28 for the Constituent Assembly and has been a top priority of reform-minded elements in the military and the Christian Democrats since the early 1960's.

The agrarian reform is not only concerned with the simple transfer of land ownership to the campesino population, but also involves the creation of a whole range of rural institutions, which had been absent from peasant life, namely primary education, health services and adult literacy programs. From the very beginning, land reform specialists and peasant organizers have been subjected to violence from the paramilitary groups protecting the property interests of the oligarchic landowners and the guerrilla forces believing their recruiting base was drying up. Peasant leaders such as Roberto Veira of the Land Reform Institute and Michael Hammer and Richard Pearlman of AIFLD were assassinated in implementing this program. As of January, some 26 farms which had been turned into peasant cooperatives under Phase I of the reform remain fallow because of violent attacks on their new owners and thousands of dollars in payroll and farm equipment funds have been robbed by guerrilla forces. In May, Salvadoran papers reported guerrillas in Usulutan rustling cattle from the farms and in areas around their stronghold in Guazapa volcano preventing farmers from planting next season's harvest.

Under Phase III of the reform or Decree 207, which gave land to the tenant farmer or lessor, owners have resorted since its inception to evicting peasants from their rented lands to prevent them from establishing land claims. Even before the latest disputes over this part of the reform, peasant organizations estimated that 17 percent of those eligible to claim land had been evicted, often forcibly by private security forces. More recently, since the March 28 election, it has been reported that between 3,000 and 7,000 peasants have been evicted from lands they could claim under the Land to the Tiller program.

Even before the recent actions by the Constituent Assembly, the agrarian reform had experienced severe difficulties because of lack of funds, inadequate and often incompetent staff, blatant mismanagement and inefficient implementation. The transfer of titles to new peasant owners has been snarled by the complexities of the title search process compounded by a severe lack of legal personnel, the extreme slowness in compensating previous owners for their property and the difficulty in adjudicating different peasant claims to the lands. Excessive indebtedness by peasant cooperatives and the lack of short-term investment credit for the new owners has also plagued the program. The administrative burden and expense of continuing the agrarian reform strains the Salvadoran Government's resources and has, at least, resulted in Phase II not being implemented. Salvadoran estimates of 1980 put the cost of Phase I of the land reform at some $1.2 billion and estimates by USAID put the cost of running the program through 1984 at $816 million.

However, in 2 short years, especially considering the violent milieu in which it was conducted, land reform has been a qualified success. According to a report done by the consulting firm of Checi and Company for USAID, its implementation was well-conceived and generally well done given the aforementioned limitations. Under Phase I, 327 farms owned by 282 persons were transferred to some 34,658 members of peasant operatives. During this stage, nearly 12 percent of Salvador's farmlands were redistributed to the campesinos. This alone represents a broadening of Salvador's landownership by a factor of 200. Despite inadequate security and farm credits to replace livestock and other capital equipment removed by previous owners, Phase I cooperatives, after an initial drop in production the first year registered 10 to 20 percent gains in yields over the prior ownership. In addition, according to the report they greatly increased rural employment because the cooperatives are by nature labor intensive and more efficient than the situation under previous owners. Peasant cooperatives also had a good repayment record for their short-term credit, making good on 75 percent of their first loans from the government.

On May 19, through Decree 6 the Constituent Assembly suspended the reforms as they applied to export-oriented crops such as sugar and cotton, where owners needed assurances of making long-term investment in their lands to increase sagging production, and, through right-wing pressure, restricted those eligible for land under Decree 207 to those peasants who have leased land prior to March 1982. Since this Decree, the military has issued instructions to its personnel committing the army to the continuation of reforms and President Magana in public ceremonies has presented the first permanent titles to peasants and emphasized in all regions of the country the government's support for the continuation of the reforms.

Since the March 28th elections, the Salvadoran Government has issued approximately 5,000 provisional titles and another several hundred definitive titles to peasants claiming land under Decree 207. This favorably compares with 27,000 provisional titles issued over a 2-year period prior to the elections. In fact, under

the controversial Decree 6, in article 2, the government, while suspending future rentals on lands under Decree 207, protects all rights of beneficiaries of this Land to the Tiller program including "tenant farmers who had already received provisional titles, had applied for them or were entitled to apply for them under the original law."

Vocal opposition to the continuation of the reforms as represented by people such as the Agriculture and Livestock Minister, Manuel Meison Yudice centers around the Phase II stage, where farms under 247 acres are to be transferred to the peasants, and the Decree 207 lands. Press reports maintaining that certain restrictions on expropriation without prior compensation for private property (as contained in the 1962 Constitution) spell the right's triumph in terminating Phase II of the agrarian reform miss the point. Phase II has always had the most severe implications for the Salvadoran economy as a whole. These one thousand-odd farms are generally owner-run and previously well-managed. They account for nearly 70 percent of Salvador's farmlands and 75 percent of its export crops, which are vital sources of hard currency. While Phase II has remained on the books, it never made progress because the government for the past 2 years lacked the sufficient funds and administrative capability to embark on it.

For the past two years, productivity on potential Phase II farms has flagged because of owner resistance to invest in planting harvests, when at any time the farmlands might be confiscated by the government. The shadow hanging over Phase II is the known slowness with which the government compensated the owners of Phase I farms which were turned into cooperatives. As of January, of the 282 owners of large estates redistributed under Phase I, only 64 had received any compensation, usually in the form of long-term government bonds of dubious value. At the same time, only 22 titles of ownership had actually been transferred. Also, it has never been decided in what manner the land was to be distributed. Delay in its implementation in large part is the result of the need at this planting time to raise productivity in the export crop area, as the records of the April 29th Constituent Assembly debate indicate, and of the justifiable concerns of owners to be fully compensated when an expropriation takes place.

The most difficult aspect of the Agrarian Reform has been Decree 207 or the Land to the Tiller Law. Under Decree 207, 178,000 hectares or 12.3 percent of all Salvadoran farmland would be sold in lots up to 17 acres to those peasants who have rented land prior to this year. Under this law, between 60,000 to 175,000 (the estimates greatly fluctuate) peasant families would be potential beneficiaries. To date, some 32,000 peasants have received provisional titles and another 7,000 have filed claims for land. Legally speaking, the actions by the Constituent Assembly only prohibits future rentals of land by peasants, thereby eliminating additional claims to land, and freezes the potential claimants to those who had rented before this past March.

Even before the March 28th elections, Decree 207 met with the most resistance within El Salvador. While Phase I and theoretically Phase II of the land reform is initiated and implemented by the government, with the direct interdiction of the military to enforce its regulations, Decree 207 beneficiaries have to register their claims on their own initiative. The landowners, generally of smaller farms and part of the local middle-class establishment, often with close ties to the military and security forces, were under no compulsion by the government to facilitate the transfer of land. The threat of eviction in the past two years has been effectively used to deprive or intimidate the peasant from filing claims or perfecting titles. Under the new law, peasants still have recognized rights to the land under Decree 207.

However, through misunderstanding of recent legislation and in some cases deliberate misperception of the spirit of the law, some landowners with the connivance of certain sectors of the military have taken the new legislation to mean that previous distinctions between a squatter illegally occupying land and a claimant were no longer valid. To facilitate access to the land for the beneficiaries, Decree 207 allows for a variety of ways by which a peasant can stake his claim to the land. But, in its vagueness over the rights of tenants, lessors and hired laborers, it has allowed landowners to declare peasants hired laborers and thereby make them vulnerable or subjective to eviction. As a result of this and the strident statements by some of the rightist parties, evictions have been on the rise and have characterized the Decree 207 program from its inception. The Union Comunal Salvadorena, the largest peasant union, claims 3,000 have been pushed off the land since the elections, the Christian Democrats have proclaimed 7,000 and then 12,000 on different occasions and the National Financial Institute for Agrarian Lands, a low figure of 1,500.

On May 1, 25,000 members of the UPD, the coalition of peasant organizations and labor unions, marched through the streets of San Salvador urging the Constituent Assembly to continue the reforms begun under the presidency of Jose Napoleon Duarte. While the Constituent Assembly has pledged its support for the continuation of the agrarian reforms, legislative technicalities aimed at "perfecting the reforms" and stimulating the agricultural production must not be used, as they are now in selective cases, as loopholes to dismantle the progress made so far in dealing with the severe and chronic problems of the rural, generally poor population.

The actions since May of the government in delivering titles to the peasants, in our view, indicates that acting Archbishop Arturo Rivera y Damas in his May 23rd homily may not be correct when he maintained that the suspension of the reform for one crop cycle was a "political maneuver" to ensure American aid. However, to ensure that it is not, the Salvadoran Government must enforce its own laws regarding the agrarian reform and issue directives to the military to prevent further illegal evictions of peasants from the land. Crucial to restoring domestic and foreign trust in the Salvadoran Government is the speeding up of the title processing procedures and adequate compensation for the Phase I landowners. As mentioned before, agrarian reform was intended to create a rural infrastructure of services for the peasants and to broaden the economic and social base of the country. To achieve these necessary goals, the Salvadoran Government must ensure and commit itself to a multi-year program of technical assistance, farm credits and bank loans to the peasant cooperatives. Recent suggestions by the rightist parties of creating stock companies out of the Phase I cooperatives only serve to reinforce the impression that the former owners want to regain control of the lands through other, more surreptitious means. Aid levels must be maintained or increased beyond present levels, with the help of the United States, so as not to threaten the financial existence and viability of the newly created peasant cooperatives.

For the Salvadoran Government's persistent critics, the past problems and flaws in the implementation of the land reform must be recognized. Both the previous landowners and the peasant organizations alike have expressed doubts, albeit from opposing viewpoints, on the way the reforms have been carried out and applied. However, a significant portion of the Salvadoran society has benefitted from the agrarian reform. Congressional support for this program should have been more emphatic 2 years ago and not simply at a time when it appeared in the American press to be threatened rather than terminate aid, financial assistance to the agricultural sector of the Salvadornan economy should be increased and earmarked for the enhancement of the agrarian reform program.

III. The human rights situation in El Salvador since March 28 elections

In the 3 months since the March 28th elections, the Constituent Assembly has extended the state of siege three times. Under provisions of this law, the traditional freedoms of assembly, movement, and expression as well as the inviolability of private correspondence are suspended. On June 17, the Constituent Assembly ignored the executive branch's request for another 30-day extension of the state of siege and only approved its continuation for 10 days. The Democratic Action Party (AD) has introduced an amendment to the siege laws and would re-establish under Article 158 of the Constitution freedom of thought, freedom of expression and freedom of the press, even during the time of war.

When a group of reform-minded officers toppled the government of General Carlos Humberto Romero on October 15, 1979, they denounced the abuses of power by government officials and pledged to sponsor elections in 1982 to move toward democratic and civilian rule. The newly formed Constituent Assembly has proceeded apace toward "institutionalizing" the democratic process in El Salvador. In its first deliberations in April, the deputies assumed the powers to form an independent executive branch and judiciary, to draft a new constitution, to set the ground rules and date for the presidential election, scheduled for 1983 or possibly 1984, and to continue ordinary legislative functions.

Fears that the elections were simply a more peaceful mode of a rightist coup d'etat have been somewhat, but not totally, dispelled. Rightist parties control the leadership positions in the Constituent Assembly, but failed to capture either the Ministry of Interior or the Presidency. In April, with only the ARENA party objecting, the Assembly endorsed the nomination of moderate economist Alvaro Magana to the presidency. On assuming the presidency, Magana also became commander in chief of the armed forces, the first time in nearly 50 years a civilian has been placed, even titularly in control of the army, although

not in effective command. Under an agreement to form a national unity government, the three major parties agreed to share 16 cabinet posts in the executive branch and to nominate three vice-presidents, one from each of the parties receiving the major portions of the votes during the elections.

On April 27, the Constituent Assembly empowered itself to elect members of the Supreme Court and to create an independent judiciary. This is particularly important in light of the noticeable absence over the past years in El Salvador of a functioning justice system. The 12 seats of the Supreme Court are to be divided among the three parties, with its president widely believed to be a nominee from either the rightist ARENA or National Conciliation Party.

As a temporary measure, the deputies have adopted the 1962 Constitution until a new constitution has been written. Since early June, the newly formed Constitutional Committee has been deliberating with the aid of outside counsel to draw up the new constitution.

As noted in Freedom House's previous advisory on El Salvador, approximately 15–20 percent of the nation's security forces still sympathized with extreme right terror. Since 1979, more than 1,000 soldiers have been dismissed or disciplined for abuses. In the past year, the military has sought to curb further human rights violations by issuing a code of conduct for its personnel and dismissing 300 from its ranks. More recently, five former National Guardsmen have been arrested and await trial for the murder of the four American Catholic women and several more have been arrested in similar cases.

After the Constituent Assembly voted unanimously on May 28 to condemn the rise in political murders, especially those of the Christian Democrat party workers, and to call for a full military investigation into the cases, the military under orders of the Minister of Defense General Guillermo Garcia arrested three members of the local security forces for the murder of two Christian mayors. During the recent confusion over the suspension of the land reform, particularly where it concerned Decree 207, the military under the direction of the executive branch sent orders to all personnel affirming the continuation of the reform process and ordering the military to preserve the rights of peasants under the program.

However, political violence, as was to be expected, has continued since the elections. According to local press reports, 438 Salvadorans were murdered for political reasons during the election month of March, 194 in April, and 301 in May. The May figures marked a steep increase in politically-related deaths. This, however, is dramatically lower than in the same months of the previous year which saw 599,493 and 454 die respectively. Political violence during the months preceding the elections was particularly high: In December 349 Salvadorans were murdered, in January 279, and in February 361.

May saw a rise in political violence, generally aimed at Christian Democratic office-holders and party organizers. Two Christian Democratic mayors of Chinamequita, the mayors of El Paisnal and El Divasadero as well as a former candidate for deputy in San Salvador were murdered. Seven Christian Democrat party organizers in Quezaltepeque were kidnapped and later found decapitated in El Playon, the notorious dumping ground for the politically assassinated. In addition, immediately after the elections, two deputies from the ARENA party were assassinated in politically-related murders.

Large scale counter-insurgency efforts in Chalatenango Department and around the Guazapa volcano as well as the guerrilla offensives in the Morazan Department in May and June have added to the large numbers of internally displaced Salvadorans and an increase in the refugees fleeing into neighboring Honduras. Salvadoran press reports claim the guerrilla's offensive in Morazan and the subsequent government response in mid-June created 10,000 refugees from San Francisco Gotera and another 3,000 from Periquin, two towns periodically occupied by the guerrillas. The intensity of these operations has led to a massive emigration from the eastern part of the country. Human rights organizations in El Salvador and the United States as well as the United States Government estimate that approximately 205,000 Salvadorans are internally displaced and another 400,000–500,000 Salvadorans have become refugees since the fighting escalated in 1979. However, not all the refugees are war-related; many as in previous years have migrated to Guatemala and Honduras for economic reasons.

Since the elections, President Magana, the military and all political parties have discussed the need for a broader amnesty law, ensuring the security of those insurgents and their families seeking to be reintegrated into the national life. The previous amnesty law had been implemented in a haphazard way and according to the predilection of the local military. On June 9, the rightist ARENA party

offered its own version of the "law of pacification, amnesty and civil rehabilitation." Under the proposed statute, "amnesty is conferred upon any civilian, or military individual, whether a Salvadoran citizen or foreigner, who up to this date participated as the author of or accomplice or accessory to political or common crimes or related activities, whether or not proceedings have been initiated against him before any judge, court or public authority and whether or not he is serving a tutelary sentence." If implemented with greater consistency and fairness than the prior amnesty laws, such legislation would be a step to greater national dialogue between the conflicting political and military forces. However, some concrete assurances to the leftist guerrillas must be given for them to participate in the program. Otherwise, as the proposed law reads, it will have effective application only to elements of the violent right-wing, who would enjoy the poltical protection of certain deputies in the Assembly.

IV. Conclusion

The massive turnout of Salvadorans on March 28th was indicative of the progress that country has made toward civilian and democratic rule. In subsequent actions taken by the Constituent Assembly, especially with the creation of the executive and judiciary branches of government, El Salvador has witnessed a halting growth both in the acceptability of democratic forms of governance and in broadening the base on which democracy can grow.

However, despite the election, El Salvador continues to face serious problems of human rights violations, security, lawlessness and economic decline. Political violence and refusal to initiate a dialogue with competing ideological forces can jeopardize the fragile process begun on March 28th. A retreat from the reformist platform of the young officers who overthrew Romero in 1979 may mean a dispiriting of the rural population which has greatly benefitted from the various social and economic reforms. Further displacement of the rural population—either from eviction from farmlands or by escalating fighting—will continue to burden the nation's resources and hinder the country from making the transition to a full democracy.

The security threats posed by the Marxist-Leninist-controlled guerrilla forces remain. For the past months, the continued activities by the guerrillas in Morazan and Chalatenango Departments shows that, despite their political defeat suffered on March 28th, they still seek to obtain power by violent means. This activity cannot be discounted in assessing blame for human rights violations and the creation of thousands more refugees and internally displaced. However, such activity in no way can rationalize or cleanse the recent re-emergence of right-wing death squads, whose targets appear to be those who committed themselves to the democratic process of March.

We are encouraged by the public statements of Salvadoran military officials, various party spokesmen and President Magana in support of the economic and social reforms made in the face of considerable pressures by certain private sector people and right-wing politicians to terminate these reforms. Since the election, approximately 5,000 provisional titles have been given to peasants eligible for land under Decree 207 and several hundred definitive titles have been dispersed in public ceremonies in every region of the country. This compares favorably with the 27,000 titles given out over the past 2 years. Concern, however, must be expressed over the eviction of the 3,000–7,000 peasants from lands they might otherwise have claimed under Decree 207. We, therefore, urge the Salvadoran Government to clarify to the United States public and their own people the present confusion over the future implementation of the land reform program.

In light of the March 28th elections, with its verifiably high turnout and subsequent actions by the Salvadoran Government in extending democratic institutions in the country, we cannot see any substantive reasons for discontinuing either military or economic assistance to that government. American aid, of course, should continue to be conditioned on progress in the human rights field, particularly the curbing of right-wing terrorism and the prosecution of those responsible for such acts, and a continuation of the social and economic reforms. Yet, American Congressmen should be aware of the flaws that have marred the agrarian reform in the past—slow compensation to previous owners, lengthy titling procedure, inadequate financing for new peasant owners, and the absence of procedures for enforcement of certain provisions of the law. These should be examined and corrected. Likewise, reform must be tempered with a prudent understanding of Salvador's economic situation and the need to increase its agricultural production. Refinement of the reforms, which would further social justice

and allow for the country's economic needs, should not be used as a pretext to terminate aid. A blatant roll-back and permanent abandonment of these reforms should.

After the initial alarm over the possible peaceful coup d'etat by the rightist parties, the Salvadoran government has embarked on the difficult task of creating viable political institutions from scratch composed of forces representing differing and competing ideological points of view. Severance of American aid at this time, particularly after the Salvadoran people demonstrated overwhelmingly their commitment and belief in the electoral process, would foreclose the democratic option for the future and would only serve to polarize the nation further, causing the rightist politicians and their militant sympathizers to seek help from nations with an ideological viewpoint less savory than our own.

The CHAIRMAN [presiding]. Thank you very much, Mr. Finn.

I believe Senator Helms has recommended and reminded our witnesses that if it is possible for you to summarize, we would very much appreciate it. Your full text will be incorporated into the record, of course.

Dr. Halperin.

STATEMENT OF MORTON HALPERIN, AMERICAN CIVIL LIBERTIES UNION/AMERICAS WATCH, WASHINGTON, D.C.

Mr. HALPERIN. Thank you, Mr. Chairman. I would like to commend you for holding these hearings and taking a serious look at this problem.

I am testifying today on behalf of the American Civil Liberties Union and Americas Watch, and on the basis of a report which we prepared 6 months ago, just prior to the first certification, and a supplement to that report which we prepared just prior to the second certification and which I believe the committee has.

I would like to try to summarize very briefly what I think the main points are. Mr. Abrams said this morning that he thought the real question was whether the government was trying to improve the situation. I agree with him. I think that is the real question, and not the precise numbers on different issues, but whether in fact the Government of El Salvador is making an effort to do the things required by the certification process.

Where I differ with him is in the answer to that question. I think the evidence is clear that the Government of El Salvador is not seeking to meet the conditions, that the progress that is reported by the President is either accidental or cosmetic, that it is either the result of events that are not in the control or not intended by the government or they are changes which are made and statements which are made just prior to the certification, but which do not have any real content or real meaning.

Let me try to illustrate that by going through the report which the State Department issued. On the first certification condition of whether the government was seeking to end human rights abuses, the first thing that was cited was public statements. There is a public statement by the new president that says he is in favor of human rights.

If you look back 6 months, the public statements of Mr. Duarte that he was in favor of human rights were cited. I do not think that anybody would argue that the new president's commitment to human rights equals that of Mr. Duarte.

Six months ago we were told that one of the main guarantees that there would be progress was that Mr. Duarte was in office. He told us when I was there, and he has told many other people, that as soon as he won the election he would then have the leverage to move on the human rights issue. Well, we now have a new president with no long record of commitment and concern about human rights and with absolutely no leverage, somebody who was put into power by the military, who did not win the election, who did not even contest the election. And I submit that one could hardly describe that as progress.

Second, we are told that there has been a reduction in the number of political murders. We are sometimes told that we cannot tell whether that is progress or not because we do not know who does the political murders. And we are sometimes told that it is progress.

We would argue, and we try to lay out in our report reasons to believe, that the decline which is reported by all of the groups that monitor is not in fact real, that the number of people killed by the right, by the security forces, by the national guard and so on may well be as high as it was before.

We point out, for example, that more violence is taking place in the countryside. We point out the ability of human rights groups to monitor has decreased over the past 6 months. We point out that, while in the past the death squads left the bodies in public graves in order to intimidate the population, they have now taken to hiding the bodies and, therefore, they are harder to find.

Mr. Abrams said he did not know how to tell who committed the murders. Well, let me suggest for one large class of the murders it always has been very easy to tell. These are bodies that show up in the morning after the curfew which were not there prior to the curfew. Anybody who is able to move around during the period of the curfew at night, the de facto curfew which I gather continues, kill people and dump their bodies close to a military barracks is, I would submit, somebody who is carrying on an activity with the cooperation of the military.

Third, we are told that there has been an increase in punishment of people in the military. As you pointed out in your questioning this morning, Mr. Chairman, in fact nobody has yet been convicted. In a country in which there have been by everybody's admission hundreds of murders by the security forces of unarmed civilians, not a single person has been convicted.

Moreover, by the State Department's own numbers, the number of people that have been taken out of the military and turned over to civilian courts has declined from an average of 30 a month during the entire period since the coup to an average of 10 a month during the 6 months of the certification. Now, how a decline from 30 a month to 10 a month of people who are cashiered can be cited as progress and as a main indication of progress, I find absolutely baffling.

Finally, the certification on this issue says that the fact that Decree 503, a decree which deprives citizens of their constitutionally guaranteed rights, which permits the military to hold civilians for months without turning them over to lawyers, is being obeyed is a sign of human rights progress. I find that at best uninformed, and at worst extraordinarily cynical.

Moreover, we have a situation in which the only way, we are told, that military officers can be punished for violations like the murders of the four American churchwomen is to take them out of the military and turn them over to civilian courts. This is a country in which civilians are held by the military and punished within the military system. So we have a system in which human rights are supposed to be protected by a system in which the military cannot be punished because the civilian courts are not functioning, and the civilians are punished by being held without charges in military jails.

On the issue of control of the armed forces, we are told that there are new instructions by the Defense Minister to the military forces, to obey the law and not to commit human rights violations. One has to ask what the military thought before General García issued that instruction last month. Does General García suggest now that, despite all the months of concern, his soldiers thought they were supposed to disobey the law until he issued that directive?

Six months ago we were told that the military had been issued a code of conduct which told them they were supposed to obey the law and not commit human rights violations, and it is clear that every 6 months we are going to get a new statement from a senior military officer to obey the law. I do not believe that that is, in fact, progress.

Mr. Chairman, I recognize that you asked us to speak briefly. I have spoken less than the other two speakers and would like 1 more minute.

The CHAIRMAN. We will, of course, give you equal time.

Mr. HALPERIN. Thank you.

Finally, on the question of elections and negotiations, I think it is extraordinary that while the certification requirement mentions the commitment of the government to begin discussions, as well as the holding of elections, the State Department certification report heading of that section is headed only "Elections" and says nothing about negotiations or discussions with the opposition.

And I think the simple reason for that is, as I understand the statements of the Government of El Salvador it is no longer open to negotiations with the opposition forces, that it is prepared to offer amnesty to particular individuals, but that under no circumstances is it prepared to open negotiations. That is simply and completely a failure to meet one of the explicit conditions on the certification.

As to the election itself, there has been a great deal of discussion. I would submit that the most important fact is that real political power has not transferred. The military remain in control. They dictated the choice of president. They continue to dictate the policies of that country. A real election will be one which produces a government which is capable of controlling the military.

Thank you very much.

[Mr. Halperin's prepared statement follows:]

PREPARED STATEMENT OF MORTON H. HALPERIN

Mr. Chairman: I appreciate this opportunity to appear before the Committee today in such distinguished company to comment on the administration's certification on El Salvador and on the report accompanying that certification. Six months ago, prior to the first certification, Americas Watch and the American Civil Liberties Union issued a report on human rights conditions in El Salvador. We issued a supplement to that report prior to the second certification.

The American Civil Liberties Union is a national, non-partisan organization which has worked since 1920 to defend individual rights. Its membership numbers over 250,000.

The Americas Watch Committee is a citizens' organization formed in 1981 to monitor and promote human rights throughout the Americas. It was created by the Fund for Free Expression, which created the Helsinki Watch Committee in 1979. Its principal officers are Orville Schell, Chairman, and Aryeh Neier, Vice Chairman. Messrs. Schell and Neier are also Vice Chairmen of the Helsinki Watch Committee.

As I indicated in testimony to the Committee in February, prior to its involvement in the El Salvador issue, the ACLU had never taken a position on the human rights situation in another country. The ACLU chose to take this unusual step because of three factors: (1) a statute that makes the question of civil liberties violations a condition of the continuation of U.S. aid, (2) a persuasive documentation of massive violations of civil liberties, and (3) a government avowedly dependent on U.S. aid for its survival and using that aid to commit human rights violations.

Attached to this testimony is a copy of the letter sent to the President by the ACLU and the Americas Watch urging the President not to certify. I request that this item be printed in the record along with the full text of this statement. I also request that the introduction and summary and conclusions section of the July 20, 1982 Supplement to the Report on Human Rights in El Salvador be printed as part of the record of these hearings. The full text of the supplement has been provided to the Committee as well as to the President and the Secretary of State.

Here we draw on our report and its supplement and other materials to present an analysis of the administration's certification report.* Our testimony is divided, as is the certification report, into five separate sections that correspond to the five conditions that the administration certified as existing. We do not believe that any fair reading of the evidence can lead anyone to the conclusion that these conditions have been met.

Enclosure.

AMERICAS WATCH COMMITTEE,
New York, N.Y., July 19, 1982.
AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., July 19, 1982.

President RONALD REAGAN,
The White House,
Washington, D.C.

DEAR PRESIDENT REAGAN: As you know, the International Security and Development Cooperation Act of 1981 (known as the foreign assistance act) requires that all military assistance and sales to El Salvador must end and U.S. military personnel must be withdrawn unless you recertify 180 days after you previously certified that El Salvador is complying with the human rights standards set forth in the Act. Accordingly, we submit to you this July 20, 1982 Supplement to our previous, "Report on Human Rights in El Salvador." In our view, it demonstrates that none of the conditions for recertification have been met.

We address ourselves to all four conditions for recertification.

Section 728(d)(1) of the Act requires that military assistance or sales must stop unless you recertify that the government of El Salvador "is making a concerted and significant effort to comply with internationally recognized human rights." Our July 20, 1982 Supplement demonstrates that the government of El Salvador is actually engaged in systematic political murder to advance its interests.

Section 728(d)(2) of the Act requires that military assistance and sales must stop unless you recertify that the government of El Salvador "is achieving control over all elements of its armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces." Our

---

*The principal sources relied on for this analysis are:
America's Watch Committee/ACLU "Report on Human Rights in El Salvador" (N.Y.: Vintage Books, 1982) (cited as America's Watch/ACLU Report")
America's Watch Committee/ACLU July 20, 1982 "Supplement to the Report on Human Rights in El Salvador" (1982) (cited as America's Watch/ACLU supplement)
Lawyers Committee for International Human Rights, "Justice in El Salvador: A Case Study" (N.Y., July 20, 1982)
Oxfam America, "El Salvador Land Reform 1980–1981: Impact Audit, with 1982 Supplement" (1982)
Roy L. Prosterman, "The Unmaking of a Land Reform," The New Republic, August 9, 1982, pp. 21–25.

July 20, 1982 Supplement demonstrates that the government of El Salvador uses these methods to terrorize the civilian population in the hope that this will deny the guerrillas the possibility of obtaining support.

Section 728(d)(3) of the Act requires that military assistance and sales must stop unless you certify that the government of El Salvador "is making progress in implementing . . . the land reform program." Our July 20, 1982 Supplement demonstrates that the government of El Salvador has removed the legal basis for land reform and brought the process to a standstill.

Section 728(d)(4) of the Act requires that military assistance must stop unless you certify that the government of El Salvador "is committed to the holding of free elections." Our report demonstrates that the elections of March 28 effectively excluded the opposition which reasonably feared that its candidates would be murdered if they campaigned.

In light of the evidence compiled in this Supplement—all of it known by the Department of State—we call on you not to recertify compliance with the provisions of the Act by the government of El Salvador.

Sincerely,

ARYEH NEIER,
Americas Watch.
MORTON HALPERIN,
American Civil Liberties Union.

Enclosure.

SUPPLEMENT TO THE REPORT ON HUMAN RIGHTS IN EL SALVADOR

(By Cynthia Brown)

INTRODUCTION

This supplement is published a week before President Reagan must certify that El Salvador is meeting certain human rights conditions if U.S. aid and arms sales to that country are to continue. It brings up to date the information we published on January 26, 1982 in our "Report on Human Rights in El Salvador." [1] We have delivered a copy of this supplement to President Reagan calling on him to refuse to certify because, as the information we have assembled here demonstrates, the Government of El Salvador has not met the conditions for aid and arms sales required by the International Security and Development Cooperation Act of 1981 (the "foreign assistance act").

Our January 26 Report was also delivered to the President with a call to refuse to certify. On January 28, the President did certify that El Salvador had complied with the human rights conditions of the foreign assistance act. In February, committees of both houses of Congress held hearings about the certification during which there was considerable dispute between Reagan administration representatives and critics of the certification about methods of compiling data about human rights in El Salvador and in particular in counting political murders by the government. The debate prompted the Americas Watch to undertake a study, published in June, on "U.S. Reporting on Human Rights in El Salvador: Methodology at Odds With Knowledge." [2] It pointed out serious distortions in the way the U.S. Embassy in San Salvador gathers human rights information and noted that some of these distortions are acknowledged in communications from the Embassy to the Department of State; that the Department further distorted the information obtained from the Embassy in its "Country Report" on El Salvador for 1981; and that this information was still further distorted in the President's message of justification for the certification and in testimony before Congress by Assistant Secretary of State Thomas Enders in support of certification. Thus even the source that the Reagan administration relied on—embassy reporting of information from the Salvadoran press—was severely distorted and grossly misleading. Moreover, the administration, we subsequently learned, made no effort to "task" the CIA or other intelligence agencies to gather data on the human rights situation in El Salvador nor did it ask the intelligence community to prepare a report based on the publicly available information upon which our report was based. If the President should re-certify, we invite comparison between the sources and content of information that the administration published to justify recertification and the supplement we now publish.

---

[1] Subsequently published commercially by Vintage Books, New York, March 1982, 312 pp., $3.95.

[2] Americas Watch, 36 W. 44th Street, New York, N.Y. 10036, 75 pp., $3.00.

The conditions for aid and arms sales specified in the foreign assistance act are: that the Government of El Salvador

(1) "Is making a concerted and significant effort to comply with internationally recognized human rights;

(2) "Is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces;

(3) "Is making continued progress in implementing essential economic and political reforms, including the land reform program;

(4) "Is committed to the holding of free elections at an early date and to that end has demonstrated its good faith efforts to begin discussions with all major political factions in El Salvador which have declared their willingness to find and implement an equitable political solution to the conflict."

We have organized this report according to these criteria. Chapters I through III deal with human rights generally; Chapter IV with controlling the abuses committed by security forces; Chapter V with the elections; Chapter VI with land reform. Finally, in Chapter VII we have brought up-to-date our examination of the U.S.. military aid role in El Salvador and added a discussion of military aid to Honduras, because of its relevance to the human rights of Salvadorans not involved in the armed conflict.

As in our January 26 Report, this Supplement treats violations of human rights as the term is generally understood in international law: that is, deprivations of life or liberty by a government without due process of law and not in the course of armed combat. We do not take sides in the war under way in El Salvador; nor do we discuss the status or geopolitical significance of that conflict. Our exclusive concern is with the violation of human rights.

This report refers to the armed conflict underway in El Salvador only to the extent necessary to help readers understand the violations of human rights that are taking place. The various individual rights generally covered by the term "human rights" are examined against the backdrop of domestic and international laws which are part of El Salvador's legal system, and which are designed to protect their exercise.

Legal guarantees of rights in El Salvador are codified in both the nation's constitution and in international instruments that El Salvador has ratified. Among the international instruments applying to El Salvador are the Universal Declaration of Human Rights and the OAS Declaration on the Rights and Duties of Man. In addition to voting for both of those, El Salvador has ratified the American Convention on Human Rights and the United Nations Covenants of Civil and Political Rights and on Economic, Social and Cultural rights. The Salvadoran Constitution of 1962 recognizes the right to life, to personal security and integrity, to freedom of thought and expression, to due process of law and a fair trial and habeas corpus, assembly and association, and to political participation. The Constitution was partially abrogated by the junta that took power following the coup of October 15, 1979, although ostensibly it remained partially in force.

The new government elected on March 28, 1982 has formally reinstated the Constitution but, as previously, with exceptions, and the observance of constitutional guarantees has been selective at best. Unconstitutional decrees imposed by the previous government, such as 296 and 507 which deny, respectively, rights of assembly and association and the right to due process and a fair trial, remain in effect under the Magana government.

Obviously, in any generalized conflict, violence stems from many sources. In the case of El Salvador, there have been many violations of Salvadoran law by armed revolutionaries. These have included summary executions, kidnappings, and the destruction of public and private property. This report does not question the use of military force to resist such acts nor the use of legal process, in accordance with internationally recognized legal norms, to punish violations of domestic law. It is, obviously, the right of any government to defend itself against violent efforts to overthrow it. Nor does this report take a position on whether conditions in El Salvador are such as to justify rebellion against the government—a right recognized under appropriate circumstances in the constitution of El Salvador as well as in the Universal Declaration of Human Rights. This issue aside, even in circumstances as difficult as those in which the government of El Salvador finds itself, however, a government must be required to adhere to certain fundamental standards of human rights. International law requires that such norms be observed and the Government of El Salvador is committed to observing this basic rule.

The idea that the way a sovereign government treats its citizens within its borders is of legitimate concern to the international community is relatively new in the history of relations among nations. Its origins lie in international condemnation of the massive human rights violations of World War II and the formation of the United Nations in the aftermath of the War and its dedication to human rights. Since then, a series of international and regional instruments have been promulgated, many of them legally binding for the states that ratify them, which specify fundamental rights that states agree to respect and protect.

The system of international human rights that has developed since World War II is premised on the assumption that international concern with and attempts to redress human rights abuses in any country are appropriate whenever: (a) the rights in question are specified in an international instrument of general application; (b) violations of rights are attributable to a government or an agent of the government as it is involvement of a government that makes domestic redress difficult or impossible; and (c) remedies for abuses under domestic law have been exhausted or it is plain that it would be fruitless to seek remedies under domestic law. International concern with human rights abuses in any country is most pressing when it is demonstrated that a government is engaging in a systematic pattern of gross violation of internationally recognized human rights.

Our research has led us to an understanding of the Salvadoran situation that differs from the Administration's view. We would reiterate here, as a point of departure for this Supplement, what we noted in January: that the underlying causes of the present crisis in El Salvador are a highly concentrated system of land tenure, the denial of basic rights to a peasant majority prevented by law and practice from forming independent organizations, and a half century of hardline military rule by an army that has traditionally represented the interests of the landed oligarchy. In the same context we note that our January Report found an increase in the frequency of human rights violations after the coup of October 15, 1979 and in particular after the junta was reshuffled on January 9, 1980. We found that despite its avowedly reformist character, the governing junta of the military and the Christian Democratic Party was responsible for a widespread and systematic pattern of gross violations of human rights and that the situation steadily worsened during 1981, including an increase in the number of political murders, widespread arbitrary arrests, and the frequent incidence of brutal torture.

This Supplement describes events from mid-September 1981, when much of the research for our previous report was completed, through July 7, 1982. Background information provided in our previous Report is not repeated except where necessary to explain events discussed in this Supplement.

ARYEH NEIER,
Americas Watch Committee.
MORTON HALPERIN,
American Civil Liberties Union.

SUMMARY AND CONCLUSIONS

1. Based on the evidence presented in our January 26, 1982, "Report on Human Rights in El Salvador" and updated in the first chapter of this report, we believe that the Presidential certification on January 28, 1982 seriously misinterprets the Salvadoran reality. In addition, State Department documents purporting to justify the Presidential certification demonstrate that the Reagan Administration seriously misinterprets the law establishing the certification requirements. Our further investigation of rights conditions in El Salvador during the past 6 months convinces us that a second certification would require no less profound a distortion of the systematic abuses of human rights carried out by official and officially-sanctioned forces both before and since the elections of March 28 and a comparable distortion of the requirements of U.S. law.

2. Rather than making "a concerted and significant effort to comply with internationally-recognized human rights," the Government of El Salvador has created a legal structure that systematically denies these rights. The legal structure for repression in El Salvador was established in 1980 by the military-Christian Democratic junta. The state of siege imposed on March 6 of that year, constitutionally permitted for only 30 days, has been renewed continually since, with the brief exception of the days surrounding the election of March 28 when it was lifted without the public being informed. The current government has reimposed the state of siege. Decree 507, promulgated on December 3, 1980, also

continues in force under the new government, permitting arbitrary and in practice limitless detention, denying adequate defense for detainees, and encouraging torture during detention, among its many repressive characteristics. The decree violates both the letter and the spirit of El Salvador's 1962 constitution; human rights lawyers in El Salvador have called it a "legal monstrosity."

In addition, the new government has carried over other decrees we describe in this report which deny rights to collective bargaining, militarize public employees and vitiate the autonomy of the National University (which has been closed since 1980).

These measures in themselves constitute a systematic and gross violation of the rights to personal liberty, humane treatment, free speech, free assembly, due process of law and fair trial, and would make a mockery of any assertion that the first requirement for certification has been met.

But the legal denial of rights in El Salvador is also accompanied by an undeclared war on the population, in which the methods used go well beyond even the extraordinary power these decrees award the government and security forces. In this war, whether the "enemy" of the moment be a civilian "subversive" or a guerrilla combatant, the security forces rarely arrest people or take prisoners. With an estimated 34,000 civilians murdered for political reasons since 1979, there are fewer than 1,000 prisoners known to be in penitentiaries for political "crimes" and no prisoners of war. Summary executions are carried out with a now-notorious brutality; decapitation continues to be common; children, women, including pregnant women, and the elderly are not exempt, and young men are especially victimized.

In periods when the war has expanded in the countryside, as during the last half of 1981 and since April of this year, human rights organizations record fewer political murders in the principal cities and other areas outside war zones where they are able to investigate and confirm deaths. This should not be taken to mean that the nature of the situation has changed. As we show in this report, the last three months of 1981 were a period of terrible repression in military-contested areas; the recent reports of 600 refugees killed on June 3 in association with a battle in Chalatenango and the civilian murders admitted by the Army during that operation indicate that the pattern has been repeated in the current phase of the war. We recognize, however, that numbers are the most commonly cited evidence of political violence in El Salvador, and we therefore include here a table of verified murder figures, with explanation as to the value and limitations of these numbers.

POLITICAL MURDERS: THE NUMBERS

The following figures are based on reporting by the Archdiocese of San Salvador's legal aid office.[3] Because the office's weekly reports do not specify the dates of most deaths, the figures here will differ from the precise monthly figures the office issues periodically; except for the 1981 months, the figures below come from weekly reports, combined to correspond roughly to months. These figures represent reporting through July 1, 1982.

September 1981: 472.
October 1981: 438.
November 1981: 820.
December 1981: 1,395.
January 1982: 466.
February 1982: 452 (1 week omitted).
March 1982: 442 (to March 20).
March 20–April 16, 1982: 658.[4]
April 17–23, 1982: 93.
April 24–May 7, 1982: 223.
May 1982: 204 (3 remaining weeks).
June 1982: 291.

The figures above almost certainly grossly understate the extent of political violence in El Salvador. The downward distortion during the past 6 months is far greater than previously for several reasons:

(1) Increasingly, political violence in El Salvador has shifted to the countryside, preventing families of those killed from reporting murders to urban-based human rights organizations and making it impossible for those organizations to verify many reported political murders.

---

[3] From September 1981–May 7, 1982, "Socorro Juridico del Arzobispado"; subsequently, "Tutela Legal del Arzobispado," which is part of the archdiocesan Commission for Justice and Peace.

[4] "Socorro Juridico's" reports occasionally covered more than one week at a time.

(2) An increasingly large part of El Salvador is a war zone, making investigations of political murders in an increasingly large part of the country difficult or impossible.

(3) Attacks on journalists and human rights monitors increasingly confine both groups to the vicinity of San Salvador, making it increasingly difficult to find out what is going on in the rest of the country.

(4) The security forces and paramilitary groups connected to the security forces that engage in political murders are changing their practices in disposing of corpses. Previously, the prevailing practice was to leave corpses in plain view at roadsides, apparently as a terror tactic. Recently, however, a shift has occurred and many more corpses are being hidden. In a number of recent instances, dumping grounds for corpses have been discovered accidentally, making it likely that additional dumping grounds remain undiscovered. In addition, the practice of mutilating bodies often makes identification impossible. This prevents human rights organizations from determining whether cases they list as disappearances should be reclassified as political murders.

(5) It is difficult to determine whether those killed in bombardments of villages and of fleeing refugees by the increasingly well-equipped Salvadoran Air Force are victims of combat tactics or of deliberate political terror tactics.

(6) The most important agency gathering information on human rights abuses in El Salvador, "Socorro Juridico del Arzobispado," was reorganized in May as the "Tutela Legal." The new organization has a smaller and less experienced staff and, to date, has confined its reporting even more closely to the vicinity of San Salvador.

For 1981, "Socorro Juridico" documented 13,353 civilian murders by the security forces and/or officially sanctioned paramilitary groups. (This figure is greater than the 12,501 cited in our previous Report because "Socorro Juridico" continued to document 1981 murders well into 1982. As reported cases were verified, the figures were adjusted accordingly.) For the reasons cited above, the verification of only 2,829 political murders during the first six months of 1982 does not warrant the conclusion that political violence in El Salvador is declining. Again, the figures we present for the first six months of 1982 [5] almost certainly grossly understate the extent of political violence in El Salvador. We decline to speculate as to the actual number of political murders. We do not know whether the actual number is higher, lower, or about the same as in 1981. We do not believe that anyone else knows. What we can say is that the essential policy of the government—that is, of the real government of El Salvador, the security forces—remains constant: the Government of El Salvador deliberately engages in systematic political murder to advance its interests.

A final note on the numbers: obviously, there is only a finite number of people in El Salvador to be killed. At some point, the number of political murders ought to decline if for no other reason than that there are fewer politically suspect persons who remain alive to be killed and have not left the country. Should the numbers decline for this reason—and, again, we stress that we have no reason to believe that the actual numbers have declined—it would be the height of cynicism to interpret such a decline as an indication that the Government of El Salvador has become more respectful of human rights. As best, we can determine, the Government of El Salvador is in full control of all its security forces; indeed the real Government of El Salvador is the security forces. That government cannot demonstrate that it respects human rights until it ends its policy and practice of political murder.

3. We have examined the Salvadoran Government's practice with respect to controlling human rights violations by armed forces and official and unofficial paramilitary groups, and have found no evidence of a significant government effort to end either murders or torture. Rather, the attacks on and murders of civilians in El Salvador, political prisoners and Salvadoran refugees during the past 6 months demonstrate that far from seeking to "end the indiscriminate torture and murder of Salvadoran citizens," as certification requires, the government uses these methods to terrorize the civilian population in the hope that this will deny the guerrillas the possibility of obtaining support.

Hannah Arendt has pointed out that it is characteristic of totalitarian states to divide authority. The state exercises what Arendt labeled "ostensible authority." A bureaucratic machine—the party in the European totalitarian states with which Arendt was familiar, the military in El Salvador and in several other Latin American countries—exercises "real authority." The formally constituted

[5] As previously, subsequent verifications of murders may raise these figures.

government, she wrote, is a "powerless facade which hides and protects the real power."

In a state in which authority is divided in this way, according to Arendt, it is necessary for functionaries "to develop a kind of sixth sense to know at a given moment whom to obey and whom to disregard." Orders are often "intentionally vague, and given in the expectation that their recipient would recognize the intent of the order given, and act accordingly." "Elite formations" understand that they are not merely obligated to obey orders but "to execute the will of the leadership." They are "trained to understand that certain hints mean more than their mere verbal contents."[6] In El Salvador the members of the security forces who take part in the work of the death squads understand the will of their superiors in the security forces.

4. The elections of March 28 do not justify concluding that the fourth certification requirement has been met. Conducted in war conditions and with numerous irregularities, the elections of March 28 also effectively excluded the opposition, which reasonably feared that its candidates would be murdered if they campaigned. Thereby, the elections denied Salvadorans any meaningful choice with respect to the fundamental national issues of war and peace. Moreover, the electoral process did not include "good faith efforts to begin discussions with all major political factions in El Salvador which have declared their willingness to find and implement an equitable political solution to the conflict"—an essential element for certification.

Changing civilian formal control of the government signifies little when real power resides elsewhere. The elections did not alter the armed forces' dominance of policy, as demonstrated in their ability to dictate the choice for president and the makeup of the new government, including General Garcia's continuation in the post of Defense Minister. Thus, former President Duarte's often-voiced hope that the elections would legitimize a civilian government with authority to control the armed forces and end abuses of human rights has not been realized. The armed forces remain in control and systematic abuses of human rights persist.

5. Rather than making continued progress in economic reforms, the new Government of El Salvador has removed the legal basis on which those reforms were initiated. "Clarifications" notwithstanding, the new Government of El Salvador has reflected the anti-reform ideology of its rightist participants. While pledging to respect the land reform, it has abrogated the law that affected El Salvador's most valuable lands under Phase II of the reform and has sent a signal to landowners that it opposes the redistribution of land to El Salvador's tenant farmers and sharecroppers. Peasants evicted from rented lands, including many holding provisional titles, must rely on the army to reinstate them—the same army that El Salvador's largest peasant federation has accused of major responsibility for murders of reform beneficiaries in 1980 and 1981. Though some reinstatements have taken place, the process is ill-coordinated and erratic, and carries with it no guarantees of future security.

It is not sufficient for the government, under political pressure, to suddenly award titles to beneficiaries of Decree 207, as it did in June. In the absence of a responsive and functioning bureaucracy to fairly process applications for titles, and an official commitment to punish landowners for evicting tenants and sharecroppers, 103 clear titles out of 150,000 intended beneficiaries can hardly offset the ongoing denial of peasants' rights under land reform.

6. The Reagan administration's misinterpretation of the law establishing the certification requirement is evident from a comparison of the law (see Appendix A) and of the message of "Justification" submitted to Congress by the White House on January 28, 1982 (see Appendix B). That misinterpretation is encapsulated in March 26, 1982 letters from Assistant Secretary of State Thomas Enders to Aryeh Neier of the Americas Watch and Morton Halperin of the American Civil Liberties Union. The letters were written in response to our previous report.

According to Secretary Enders: "While the report charges official forces with numerous violations, it nowhere proves or even alleges that human rights violations increased throughout 1981. As a result, it does not attack the basis upon which the Administration made its certification."

Whether human rights violations increased or declined is not a criterion for certification. The law is concerned with whether the Government of El Salvador made a "concerted and significant effort" to protect human rights. Our previous Report demonstrated that the Government of El Salvador did not make such an

---

[6] Hannah Arendt, "The Origins of Totalitarianism," Meridian Books, New York, 1958, pp. 397–400.

effort in 1981; this Supplement demonstrates that it did not make such an effort during the first half of 1982. The law also requires the Government of El Salvador to control all elements of its security forces "so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces." Our previous report demonstrated that the Government of El Salvador was not bringing an end to torture and murder by those forces during 1981; the Supplement demonstrates that it did not bring an end to torture and murder by those forces during the first half of 1982.

The Reagan administration's misinterpretation of U.S. law establishing the certification requirement is further shown by a State Department cable to the U.S. Embassy in San Salvador that was reported in the July 3 Washington Post. In an effort to obtain material justifying recertification, the cable tells the Embassy that, "A specific order to take and protect prisoners issued and publicized by the Ministry of Defense should be highly desirable" and that the International Committee of the Red Cross "has made it clear that it is prepared to pull out of El Salvador if its concerns [about the failure of the Government of El Salvador to take prisoners] are not met. ICRC departure would be a severe blow to our efforts to maintain Congressional support. ICRC involvement in a program for the reception, incarceration and rehabilitation of insurgents is desirable but should not be pushed if, by doing so, ICRC-Salvadoran relations become further strained."

This cable suggests that the State Department is more concerned with appearances than reality. Departure of the International Committee of the Red Cross from El Salvador would be bad for appearances. To avoid such appearances, the Ministry of Defense is to be asked to issue an order. Involvement of the ICRC in the confinement of prisoners would be good for human rights and good for appearances. On the other hand, if the ICRC actually became involved, its departure from El Salvador might be hastened. Even though involvement of the ICRC would be good for human rights, it would be bad for appearances if this caused its departure. Accordingly, involving the ICRC may have to be avoided.

What is missing, obviously is concern for the substance underlying the appearances. When the substance might conflict with the appearances, it is the substance that may have to be sacrificed. Plainly this misinterprets the law which asks the President to certify as to the substance of human rights practice in El Salvador, not as to appearances.

No serious examination of conditions in El Salvador and of U.S. law can lead to the conclusion that any of the requirements for certification has been satisfied. We accordingly oppose certification and the sending of any further military aid to El Salvador.

The CHAIRMAN. Thank you very much, Dr. Halperin. We appreciate your statement very much.

Mr. James.

STATEMENT OF DANIEL JAMES, SECRETARY, COMMITTEE FOR FREE ELECTIONS IN EL SALVADOR, WASHINGTON, D.C.

Mr. JAMES. Thank you, Mr. Chairman, for inviting me here to testify on this highly important issue this afternoon.

I have been concerned with Latin America for a period of nearly 30 years as an author and journalist. I have lived in the area, in Mexico, for 22 of those years, and so I have some knowledge of the facts and the situation there firsthand.

I am rather appalled, sitting here listening to Mr. Halperin talk about hearing the so-called cynical statements made this morning by Mr. Abrams, when his organization, the American Civil Liberties Union, jointly with the Americas Watch Committee, has issued a lengthy report which is cynical, partial, biased toward the guerrillas, and lacking totally in information that can be verified. Above all, it uses sources, principally the so-called Legal Aid Office of the Archbishopric of San Salvador, which have been discredited by the Archbishopric and by the Church of El Salvador.

Yet we find no warning to the reader, in these 272 pages which the ACLU and AWC have put out, that Bishop Rivera y Damas since May 31 of 1981 has delivered two homilies repudiating, disavowing and attacking the Legal Aid Office for "creating confusion" and for serving "partisan interests." The Legal Aid Office nevertheless continued to defy the authority of the Church, although Mr. Halperin's document would attempt to invest the Legal Aid Office with something of the aura of that authority, so that finally the four bishops of El Salvador, in an extraordinary meeting held last December 2, had to issue a statement dealing with this problem. I would like to quote from that statement, Mr. Chairman, if I may. It began:

> In view of the confusing information about national events in El Salvador which is disseminated abroad in a unilateral way, or is simply distorted for political reasons or partisan interests, the bishops of El Salvador, at an extraordinary meeting on December 2, 1981, reflected upon the activity of the "Legal Aid Office" of the Archbishopric of San Salvador and decided unanimously to support the statement made by His Excellency, the Apostolic Administrator of San Salvador, Monsignor Arturo Rivera y Damas, in his homily of Sunday, November 15, 1981, concerning the office of the Archbishopric known as the "Legal Aid Office."

Now, the American Civil Liberties Union and Americas Watch Committee must have known of the existence of these accusations by the Catholic Church since May of last year, a total of approximately 14 months. Yet you will find absolutely no indication of them in their 272-page document.

As a matter of fact, a liberal group in this country called the Institute on Religion and Democracy, which is Catholic, issued a pamphlet dealing with the Church in El Salvador that accuses the Legal Aid Office of reporting "only one side" of the killing of noncombatants—a charge echoed by Bishop Rivera y Damas himself—and of "making it seem to world opinion as if a general massacre instead of a civil war is taking place in El Salvador," which is exactly what the ACLU–AWC document purports is happening.

I ask: Is the ACLU–AWC report opposing certification intended at bottom to create the same impression, that a massacre is taking place or that there is "an undeclared war" against the Salvadoran people, another intemperate statement made in the same document? Is it not logical to deduce from this that both organizations are serving the guerrillas' purpose of spreading "misinformation," the word used by the Institute on Religion and Democracy, or, as I would prefer to call it, disinformation?

To be fair to those organizations, if they are not guilty of spreading disinformation on behalf of the Marxist guerrillas, is it not up to them to repudiate the chief source of their information on human violations in their report, the Legal Aid Office?

They make similar charges against the elections, using exactly the same sources. May I note that, when I was in El Salvador last March as an observer of the elections, I made it a point to visit the Legal Aid Office's premises. I can assure you, Mr. Chairman, they are lacking in the most elementary facilities, such as Xerox machines, not to speak of computers or other sophisticated equipment, or even personnel, which you would imagine would be required to conduct a thoroughgoing scientific survey of a country in a state of civil war in order to arrive at exact figures on who has been killed and by whom.

No such facilities, physical, human or technical, existed then in the Legal Aid Office. I do not think the American Civil Liberties Union would get far in any court in the United States using resources that simply do not exist.

Now, on the elections, the ACLU and AWC say substantially the same things they do about the human rights violations, and use the same questionable sources, in this case the University of Central America, which has been identified as a group that sympathizes with the guerrillas. There is no question about that. On the other hand, they have not seen fit to check with other sources regarded as more reliable, such as Freedom House, which, as Mr. Finn said, sent a five-person mission to El Salvador last March. They gathered information on the spot. But do you see a word in the ACLU–AWC document referring to the Freedom House report? Not a single word.

So the document that they are attempting to sell the American people and the Congress as authentic is, in fact, phony. The figures it uses cannot be substantiated by any reliable source in existence.

I would like now to dwell on a point that I think is fundamental, which is that much of this discussion, Mr. Chairman, public discussion, has been couched in terms of El Salvador during the recent few years, going back perhaps a maximum of 50 years to 1932. I submit to you, sir, that that country has a history dating back to 1521, and I would suggest that in the future some of the discussion be conducted within that historical framework.

The fact is, it is not just in the last 50 years that El Salvador has had military regimes. It has always had them, more or less, since the time of the conquerors and even after independence was attained, when the military or semimilitary leaders were called caudillos—men on horseback, so to speak.

They were authoritarian. This has been the tradition, unfortunately, of El Salvador and other Latin American countries. How then can we expect El Salvador overnight, since the March 28 election, or even since the 1979 young officers' coup, to suddenly become converted into a democracy, when it took us more than 200 years to get where we are and, historically speaking, a matter of about 700 years?

I stress also the fact that, accompanying the authoritarianism endemic to El Salvador since time immemorial, has been what former President Duarte has called the culture of violence. This is part and parcel of the whole authoritarian system. The culture of violence was not something invented yesterday by General Garcia and the paramilitary and security forces of El Salvador; it has been there for centuries.

Indeed, the guerrillas, which the ACLU/AWC report seems partial to, have also been practitioners of the culture of violence. They were the ones who initiated the present civil war. They started it exactly on October 16, 1979, one day after the reformist officers had overthrown the admittedly repressive regime of General Romero.

What was the guerrilla objective? To crush any effort at achieving necessary economic, social and political reforms. That that was their objective is clearly explained by one of their top leaders, Joaquin Villalobos, self-styled "supreme commander" of the People's Revolutionary Army, who has frankly stated:

Perhaps one of the boldest steps we have taken is the insurrection of October 16, 1979, the day after the fall of General Carlos Humberto Romero's government. For 12 hours and in some cases longer, we maintained the military occupation of various towns. Why did we proceed in this manner? Because the situation was a guise of imperialism to deceive the Salvadoran people. To have united behind it would have signaled a defeat of a revolutionary alternative.

And that is what the guerrillas are concerned with, and so are their sympathizers and supporters: "a revolutionary alternative." They do not want democracy, and that is why they fought so hard to boycott the March 28 elections and then, having failed to do so, finally firebombed polling places all over the country in order to prevent them. I was present at the time, Mr. Halperin, and I saw this guerrilla violence in action.

What would be the consequences to the United States if the Congress chose to follow the highly tendentious route marked out by the American Civil Liberties Union and the Americas Watch Committee, and decided to oppose certification? Withdrawal of our military aid would automatically weaken the Salvadoran armed forces and correspondingly strengthen the guerrillas. You would see demoralization set in among the armed forces and probably among the civilian population as well.

All this would inevitably impact on the delicate political balance in the country, and yes, as Dr. Anderson mentioned, might very well provoke the military into a return to repression, make a coup and reestablish a military regime. Of course, this is what the guerrillas would want.

The CHAIRMAN. Mr. James, if you could summarize your statement now.

Mr. JAMES. Yes.

I would say that the consequences of a failure to certify would extend far beyond the boundaries of El Salvador, and would affect our own country as well as countries around El Salvador. I predict that if there is no certification, and if there is a crisis as a result which would demoralize the country, we would probably see an upheaval in El Salvador outmatching just anything that can possibly be described even by the ACLU–AWC report.

I think that there would be regional conflict, and that such a regional conflict would eventually touch the shores of the United States. This is really the bottom line, this is what we have to keep in mind when we discuss certification and the problem of El Salvador in general.

[Mr. James' prepared statement follows:]

PREPARED STATEMENT OF DANIEL JAMES

Thank you, Mr. Chairman, for inviting me here to testify on the highly important issue of Presidential certification authorizing continued U.S. aid and arms sales to El Salvador. Complying with your request to focus upon those aspects of certification with which I have some familiarity, I shall dwell in this statement upon two of them, human rights violations and elections, then conclude with presenting some essential background and some thoughts concerning the future of that country and its possible impact upon its nearest neighbors and the United States.

Before I continue, I should like to make it clear that I am not appearing here in the name of the Coalition for Free Elections in El Salvador, although I feel certain that a majority of our members would probably agree with the basic contents of my statement. There has not been enough time to obtain their permission to represent them formally.

I am in agreement with the idea of a certification process, Mr. Chairman, and laud the Congress for its wisdom in passing legislation to that effect. It is a healthy process, in that it puts pressure upon the Salvadoran Government to move forward in the crucial areas of economic, political and social change—especially with regard to the protection of each person's human rights—while at the same time it keeps the Administration on its toes to maintain the pressure. I feel, however, that the act should perhaps be broadened, to include larger questions such as: Is El Salvador moving, despite many obstacles, in the direction of democracy? What forces, in and out of the country, are impeding or encouraging progress toward democracy? What further positive measures should the United States take to help speed up the democratic evolution of El Salvador? The certification process as it now stands, Mr. Chairman, lends itself to narrow partisan interests more concerned with highlighting negative and sensational aspects of the situation in El Salvador, without offering any solutions, than with presenting a balanced portrayal of it. Show the warts, yes, but also that which is unblemished.

I am particularly concerned, for example, over the ghoulish numbers game being played by certification opponents with respect to the "body count"—a callous phrase referring to the numbers of innocent victims of human rights violations—in El Salvador. This has forced the Administration itself, unfortunately, to play the same game. Yet the cold truth is that nobody in El Salvador, much less outside, is capable of making an accurate or even near-accurate tally of all those who have been killed indiscriminately, in the midst of a raging civil conflict that has all but shattered most normal means of communication and of gathering information. I am therefore dismayed when respected U.S. private organizations such as the American Civil Liberties Union and the Americas Watch Committee, which have recently issued a joint report opposing certification, pretend to have accurate or near-accurate statistics on the number of people allegedly killed by the Salvadoran armed forces and related security and paramilitary organisms when, in the nature of things, that is impossible. I am even more troubled when I find that the report of those two normally judicious and impartial groups is based primarily upon sources in El Salvador which have been thoroughly discredited and possess ties with the Marxist guerrillas—facts which the report, moreover, does not reveal to the public. In sum, both the pretense to having accurate or near-accurate data on indiscriminate killings, and the resort to unreliable and partisan sources of information to back them up constitute, I believe, an assault upon the credibility of the many Americans who have hitherto placed great store by the reputations of the American Civil Liberties Union and Americas Watch Committee for honesty, fairness and objectivity.

Since their reputation have hitherto been held in high esteem by Americans, and what they say may influence the judgment of members of Congress as to whether the Presidential certification should be held or not, it is highly pertinent to examine the basic assertions made by the ACLU and AWC in their report on human rights violations and the sources upon which they are based.

In their 272-page joint report, The ACLU and AWC charge that the Salvadoran Government is committing "systematic political murder," and even waging "an undeclared war on the population" of the country. Now those charges, Mr. Chairman, are the gravest ones that can possibly be made against the government of a neighboring country—amounting, in effect, to accusing it of genocide—and one would expect, therefore, that those making them would produce abundant unimpeachable evidence to back them up. However, combing through every page of that report, one finds no evidence than can withstand sharp scrutiny. What one finds, instead, is a mass of unproved and, probably in most cases unprovable, statistics handed out by sources of a doubtful character. Since the numbers and the sources are inextricably linked together in the case made by the ACLU–AWC report, let us turn to an analysis of those sources.

We find on page 12 of the report a section headed, "Political Murders: The Numbers," which begins: "The following figures are based on reporting by the Archdiocese of San Salvador's legal aid office." It then lists a column of figures of the alleged "political murders," by the month, from September 1981 to June 1982. Further on, it repeats mention of "Socorro Juridico del Arzobispado" (Legal Aid Office of the Archbishopric), and characterizes it as "the most important agency gathering information on human rights abuses in El Salvador" without documenting that opinion. The intent, clearly, is to give the reader the im-

pression that the Legal Aid Office is both of unimpeachable reputation and somehow enjoys the blessing of the Salvadoran Catholic Church. Nowhere does the report hint at the existence of a long history of conflict between the Legal Aid Office and the Salvadoran Church, precisely over the former's unreliability and partisan bias in reporting human rights violations, and that finally the Church was compelled to disown then disband the LAO.

The Salvadoran Catholic Church has actually disavowed the Legal Aid Office, officially and publicly, on at least three separate occasions, between May 31, 1981, and January 6, 1982. Yet none of these disavowals is mentioned in the ACLU–AWC report, not even in a lowly footnote—surely an omission that is, to say the least, inexplicable in a report whose primary, perhaps sole source of information on human rights violations in El Salvador is precisely . . . the disavowed group. Instead, the report, by omitting mention of the Church's disavowals of the Legal Aid Office while on the other hand repeatedly referring to it as "of" the Archbishopric, leads the reader to believe that it enjoys Church sanction and hence must be reliable and authoritative.

Perhaps more astonishing, the ACLU–AWC report also fails to inform its readers of the highly significant fact that the Salvadoran Church has accused the Legal Aid Office of engaging in a deliberate effort to "create confusion" with its lists of largely undocumented figures on human rights violations, especially abroad—that is, in the United States. The confusion is particularly evident in the ACLU–AWC report's use of those figures. The Church accusation added that the LAO created confusion "for political reasons or partisan interests"—an allusion to the LAO's pro-guerrilla sympathies. Did the American Civil Liberties Union and/or Americas Watch Committee know that the Salvadoran Church had made that serious accusation against the LAO? If not, they were certainly remiss, at the least, in not having knowledge that has been common in El Salvador since May 1981. If so, then one wonders what motivated them to hide that knowledge from the American public and from the Congress, whose members are soon to take a stand on certification.

The first official and public disavowal of the Legal Aid Office was made by the Apostolic Administrator of the Archbishopric of San Salvador, Bishop Arturo Rivera y Damas, in a homily which he delivered on May 31, 1981. Note well the date, Mr. Chairman: 14 months ago. That was long before the certification act was passed by Congress, permitting such groups as the ACLU and AWC more than ample time to read and digest the homily and make some mention of it, at least, in the two reports they have issued (the first, in January 1982) on certification. Actually, they were obligated morally to re-examine the advisability of using a tainted source as the basis for their position against certification, and to publish in detail the contents of the Bishop's disavowal to warn the "reader-consumer" that he/she was "buying" a defective product. In that homily, Msgr. Rivera y Damas expressly prohibited the LAO from acting as the Church's "official or unofficial voice," and specified exactly who could speak for the Church. The ACLU–AWC report also fails to mention that prohibition, as another caution to the reader, thus continuing to create the false impression that the Legal Aid Office somehow represents the Salvadoran Church.

Since the LAO ignored the Bishop's prohibition and continued to act as though it were speaking for the Church on human rights violations, Rivera y Damas felt constrained to deliver yet a second homily, on November 15, 1981, disavowing it in even stronger terms. In it, he charged directly that "the publications of the Legal Aid Office create confusion in clearly adopting positions unilaterally"—an allusion to its frequent publication of figures on human rights violations on its own accord in defiance of the first disavowal. Does the fact that the ACLU and AWC have reproduced the LAO's "publications" make them a party with it to "creating confusion"? Or will these organizations maintain that they were in ignorance of the Rivera y Damas charges against their source of information, the Legal Aid Office? Either way, these are questions they are obligated to answer before the public of this country.

The Legal Aid Office also flouted the Bishop's orders, in the November homily, to "confine its activity" to "jurisdical and technical matters," and continued to issue "publications" attributing indiscriminate killings wholly to the Salvadoran armed forces and security organisms, further "creating confusion" abroad, particularly in the United States. The LAO's unmitigated defiance of Church authority finally made it necessary for all four El Salvador's bishops to convene an "extraordinary meeting" on December 2, 1981, to deal once more with the

problem. The bishops issued, on January 6, 1982, a formal "Statement of the Episcopal Conference of El Salvador on the Legal Aid Office of the Archbishopric of San Salvador," which began:

"In view of the confusing information about national events in El Salvador which is disseminated abroad in a unilateral way, or is simply distorted for political reasons or partisan interests, the bishops of El Salvador, at an extraordinary meeting on December 2, 1981, reflected upon the activity of the 'Legal Aid Office' of the Archbishopric of San Salvador and decided unanimously to support the statement made by His Excellency, the Apostolic Administrator of San Salvador, Msgr. Arturo Rivera y Damas, in his homily of Sunday, November 15, 1981, concerning the office of the Archbishopric known as the 'Legal Aid Office'. . . ."

Detailing its support of Rivera y Damas' November homily, the Episcopal Conference statement concluded:

"(2) It disavows any statement [by the Legal Aid Office] that has been made or will be made in the future, in the name of the Church or the Archbishopric. . . ."

The Salvadoran bishops were saying, to anyone who had somewhat of an open mind about events in their country, beware of the Legal Aid Office's figures on human rights since they serve "partisan interests"—a euphemism for the Marxist guerrillas. Logically, organizations professing to be dedicated to the commonweal of this country had the obligation to think twice before accepting as gospel truth, in the face of so strong an accusation by the Salvadoran Church, the statistics and assertions made by a "partisan" source concerning a civil war in a foreign country with which they lacked previous familiarity. But, six months after that accusation, and fourteen months after Bishop Rivera y Damas first aroused suspicion of the Legal Aid Office's credentials, the American Civil Liberties Union and Americas Watch Committee have unconscionably attempted to give the LAO and its human rights violations figures credibility in their effort to halt Presidential certification. Further, they have not even observed the elementary rules of fair play and honesty in having failed to mention in their report the bishops' accusations and disavowals of the LAO, so denying the reader access to information which could help him/her pass informed judgment on the human rights question.

What could be the objective of these estimable groups, the ACLU and AWC, in keeping from the American public and the American Congress the truth concerning the origin of their figures on human rights violations in El Salvador? Is it possible that they were ignorant of the ulterior motives of the Legal Aid Office? If that is the case, Mr. Chairman, since after all they were involving themselves in a foreign country about which they knew little or nothing—I believe this is the first time that the ACLU has concerned itself with human rights outside the United States—I draw to your attention some material on the Legal Aid Office published by an American organization, the Institute on Religion and Democracy. The Institute—a liberal body, by the way—has issued a pamphlet called "The Catholic Church in El Salvador," written by Kerry Ptacek, which states:

"Few people outside of El Salvador are aware of the conflict between Rivera y Damas and Socorro Juridico [Legal Aid Office] precisely over the legal aid office's propensity to issue statements opposed to the views of the Church."

Mr. Ptacek then explains in his pamphlet that the Legal Aid Office is one of "three sources of misinformation in El Salvador about the position of that country's Catholic Church." The other two are a tiny group of leftist priests calling themselves the "People's Church," and the guerrillas themselves.

The Institute on Religion and Democracy pamphlet charges, further, that the Legal Aid Office has been reporting "only one side" of the killing of noncombatants—a charge echoed by Rivera y Damas himself—and "makes it seem to world opinion as if a general massacre instead of a civil war is taking place in El Salvador."

Is the ACLU–AWC report opposing certification intended, at bottom, to create the same impression, that a "massacre" is taking place in El Salvador? What other impression can it create since it accuses the Salvadoran Government of waging "an undeclared war" against its own people? Clearly, insofar as the American Civil Liberties Union and Americas Watch Committee are concerned, there is no civil conflict in that country. For them, there are no guerrillas fighting the government, there is no Marxist insurrection, there is only a "massacre"—or "an undeclared war" against the Salvadoran people—taking place. I ask you, Mr. Chairman, is it not logical to deduce from this that both organizations are serving

the guerrillas' purpose of spreading "misinformation," as the Institute for Religion and Democracy calls it, or as I would prefer to say, "disinformation"? To be fair to those organizations, if they are not guilty of spreading "disinformation" in behalf of the Salvadoran Marxist guerrillas, is it not up to them to repudiate the chief source of their information on human rights violations in their report, the Legal Aid Office? I, for one, earnestly hope that they will.

Meanwhile, it is also pertinent to note that, apart from the Salvadoran Catholic Church's accusations against the Legal Aid Office, there is the fundamental problem of its inability to assemble data proving human rights violations due to its lack of plant and the innumerable obstacles to gathering and verifying information in the midst of a raging civil conflict. I personally visited the Legal Aid Office last March, while in El Salvador serving as an observer of the elections as the representative of the Coalition for Free Elections in El Salvador, and talked to the person in charge. Mr. Chairman, I was appalled at the lacks I found there. To begin with, the office itself was tiny, occupying a small building behind the Archbishopric with barely enough room for a handful of desks, typewriters and filing cabinets and a like handful of workers. I saw nothing in it resembling a copying machine, much less a computer or other sophisticated equipment one would imagine indispensable to the very serious business of counting the tens of thousands of violations of human rights allegedly committed by the Salvadoran armed forces and security and paramilitary services throughout the country. I saw no tangible evidence, in short, of any physical, technical or human capability for gathering, sorting and analyzing the mass of data now being circulated in this country by such organizations as the American Civil Liberties Union and Americas Watch Committee.

To make a comparison, Mr. Chairman, we know that in the United States to conduct the most elementary survey of anything—a product, a market, a state of mind—requires not only the most up-to-date equipment imaginable, including of course batteries of telephones, but also trained personnel. In El Salvador, even before the civil conflict, such a thing as trained information specialists who could go about the country gathering data on day-to-day problems such as the corn or coffee crop were in short supply. Where, then, could the Legal Aid Office get enough trained specialists to find out exactly who was killed by whom in all parts of El Salvador while shooting was going on all around them? I know that much, or perhaps most of the LAO's information on killings came from relatives and friends of the deceased who went to it with information. But how could the LAO distinguish such "information" from pure hearsay? The American Civil Liberties Union has had too much experience over many years to offer such hearsay in a U.S. court as evidence of a crime—why does it attempt to hoodwink the court of public opinion with hearsay?

I wish to make it clear, Mr. Chairman, that I acknowledge that the Salvadoran armed forces and allied organizations are undoubtedly guilty of many killings of noncombatants and many other abuses of human rights such as torture of innocents. Their excesses are too shocking for words. I abhor and condemn them as strongly as do the ACLU and AWC or any other bona fide group concerned with civil or human rights. And I support all efforts being made to dissuade those Salvadoran forces from committing so much as one more abuse of human rights, including those of the guerrilla enemy. I also support all efforts being made to bring to justice those who have been accused of murdering the four American churchwomen and two American Institute for Free Labor Development officials. I find violence reprehensible as a means of solving human problems—and in the end it does not solve them. But I also believe in being evenhanded, and submit that, as Bishop Rivera y Damas and the Institute on Religion and Democracy point out, the Salvadoran Marxist guerrillas are also guilty of committing killings indiscriminately and should be equally condemned.

Meanwhile, it appears to be generally acknowledged, even by such leftist sympathizers as the University of Central America, that there has been a downward trend in human rights violations over the past six months. Again, accurate statistics are lacking to prove that statement, but enough is known to indicate that it is true. For one thing, the fact that the Salvadoran people turned out in huge numbers last March to elect a constituent assembly vividly demonstrates a surprising degree of law and order in a country torn by civil strife, as well as a lack of fear of appearing in public to exercise the duties of citizenship; clearly, such an event could not have happened if, as the ACLU and AWC report asserts, the government were conducting "an undeclared war" against the population. For another thing, the fact that guerrilla ranks appear not to have increased over the past 6 months—judging by their inability to score significant

military victories—would seem to indicate that human rights violations are not at previous levels that drove people to join them. Finally, there seems to be enough evidence that the Government of El Salvador is bringing its armed and security forces under control and in some cases—not enough, however—it is disciplining those who get out of hand, setting an example which should restrain others from committing human rights abuses.

Of course any level of human rights abuse is intolerable, and we should maintain the certification process as a lever for continuing to press for its total elimination in El Salvador. At the same time, whatever the figures on human rights violations may be, they should not blind us to the fact that there is a civil war going on in that country, that it has political origins, and that it requires a political solution in the long run. We should not be blinded to the further fact that El Salvador is trying to effectuate a political solution to its problems even while it must defend itself, by force of arms, against a foe that would resort to violence to abort such a solution.

The most dramatic and encouraging sign that the Salvadoran people are determined to find a political solution, and therefore merit all the aid we can give them in helping provide a military shield behind which they can continue peacefully along that path, took place on March 28 of this year. On that day, a record 1.5 million Salvadorans out of a total population of about 5.5 million, crowded the polls to elect a constituent assembly. It was the first free election the country had held in 51 years, and only the second in its entire history—thus representing, I believe, a watershed in Salvadoran politics. They voted, moreover, under the most adverse circumstances conceivable. They walked endless miles, they rode in rickety vehicles, they stood in long lines, they tolerated a scorching sun, they suffered hunger and thirst, and above all they defied guerrilla bullets and bombs in their determination to exercise the franchise and vote. Although the total vote was divided among six political parties, it represented—as hundreds of foreign observers and foreign press have attested—a defeat for the guerrillas and a victory for peaceful change. I was fortunate to have been a witness to that historic event, as was one of your own esteemed members, the Honorable Nancy Kassebaum, who headed the official U.S. delegation. I remember her enthusiasm on that occasion. For what she and the rest of us heard then was the authentic voice of the Salvadoran people clamoring for peace and democracy—a voice I hope that Congress will heed by supporting certification as the only means at hand to help a valiant neighbor find the path toward democracy.

Unfortunately, there are those, both in and out of Congress, who appear to be deaf to the plea of 1.5 million Salvadoran voters for our assistance, charging that "fraud" was committed during the March 28th election. Again, as on the human rights issue, the charge has been inspired by questionable sources—in this case, the University of Central America—yet upheld by such respected groups as the American Civil Liberties Union and Americas Watch Committee without question. The UCA is an institution with decided pro-guerrilla leanings. Several of its former leading lights are openly aligned with the guerrillas. One, for example, Guillermo Ungo, is president of the Democratic Revolutionary Front (FDR), the political arm of the guerrilla command. Another, Salvador Samayoa, a former education minister, is a guerrilla leader. The UCA itself is a member-observer of the FDR. Yet the ACLU–AWC report utilizes the University of Central America as its principal source for charging that the March 28 election was fraudulent.

Surprisingly, the report's authors apparently did not check the authenticity of the UCA's findings against those of other sources, including the highly respected Freedom House. That organization sent a five-person team to observe the election and issued a report which declared that it "was not marred by gross fraud." We look in vain, throughout the ACLU–AWC document, for any sign of the Freedom House report, if only to give lip-service to fairness and objectivity. Why was no mention made of it? Are we faced with another instance of withholding information which might be contrary to the preconceived notions of the ACLU and AWC? Does the Congress, and the American people in general, have no right to know that there is another—and as it turns out more reliable—version of what happened on March 28?

For purposes of the record, Mr. Chairman, I should like to refer here to the evidence of still another election expert, Dr. Howard Penniman, who disagrees with the ACLU–AWC interpretation of the Salvadoran election yet whose comments on it are also ignored by its authors. Dr. Penniman, an internationally recognized authority, checked the electoral procedures in El Salvador before March 28 and was also present during the election period as an official U.S.

observer. He ridicules the fraud charge, writing that to inflate the vote "a giant conspiracy of silence would have been required, involving all members of the National Election Council and its staff, the leaders of all political parties and perhaps as many as a quarter-million precinct officials and poll watchers"—a manifest impossibility. He concludes:

"I witnessed the spontaneous enthusiasm of Salvadorans for the election in person. Millions of Americans witnessed it on television. I verified the authenticity of the election process based on a lifetime of observing elections in the United States and in dozens of developed and developing countries."

Besides charging fraud, the ACLU–AWC report avers that, in any event, the election only "consolidated [the rightwing's] control over the machinery of power" and "legitimized" it. The result, it continues, was also "to legitimize extreme-right allies of the armed forces." Apart from the fact that before the election power had been held jointly by the left-of-center Christian Democrats and the armed forces, the statements just cited are inaccurate. The Salvadoran right does not control "the machinery of power" today, and it is not "allied" with the armed forces. Power, as any intelligent observer of Salvadoran political reality can ascertain, is actually dispersed among various elements inside and outside the new Constituent Assembly, with both the Christian Democrats and the armed forces having a say, to one degree or another, in the country's affairs. The armed forces, far from being "allied" with the right, have been opposing it on such crucial issues as the land reform, insisting that the rightist-dominated Assembly press forward with it. Likewise, they have imposed a moderate president, Dr. Alvaro Magana, upon the unwilling right-wing majority. This is not to say that it is desirable, or democratic, to have an army pressure an elected body to do its bidding, but simply to note that the reality of Salvadoran politics is not as cut and dried as the ACLU–AWC would have it. It also shows how far El Salvador must travel on the road to democracy.

But our attention should not be diverted, by simplistic statements and distortions, from the fact that there are positive sides to the slow and painful democratic process in El Salvador. Thus the Constituent Assembly is working to fulfill its primary objective of writing a constitution, and to prepare the way for another major step to be taken by the Salvadoran people in the direction of democracy, hopefully, next year or early in 1984, when they will again go to the polls. Next time, they are to elect a president and a congress for a given term of office under the new constitution—they will vote, in short, for a permanent representative government. Probably it will reflect certain weaknesses, but it should be another improvement over what exists today.

The point is, I believe, that we should not lose patience with the Salvadorans and expect them to achieve overnight what it has taken us more than 200 years—historically, more than 700 years—to achieve. We tend to forget that the Latin countries have a long background of authoritarianism reaching back to the days of the Spanish colonial empire and even earlier, to the eight centuries of Moorish domination before Spain freed itself in 1492. The conquistadores who arrived in what is today El Salvador, in 1521, did not do so with the intention, as our forefathers did, to establish a free and democratic country but, on the contrary, to impose an authoritarian regime controlled from abroad. The various Indian tribes such as the Mayas whom they found there were not exactly paragons of freedom or democracy, either, and were unable to rise up against the foreign conqueror since they lacked a tradition of free expression as well as modern military means. When El Salvador finally obtained its independence from Spain, some three centuries after the Conquest, its leaders, themselves inculcated with authoritarian ideas during that long period, exploited the country's independence to their own advantage and to that end ruled it with an iron hand even as the Crown had.

The history and culture of El Salvador, which I am barely able to touch on here, is totally ignored by the authors of the ACLU–AWC report. In their effort to make a "political case" against certification, they would have us believe that "the underlying causes of the present crisis" in that country date from 1932, with the initiation of "a half century of hardline military rule by an army that has traditionally represented the interests of the landed oligarchy." Nothing is said about the fact that, almost since its independence in 1821, military regimes have been virtually the rule in El Salvador, continuing the Spanish tradition, usually under native-born caudillos—roughly meaning, men on horseback—and antedating by generations the formation of a "landed oligarchy." El Salvador simply does not fit Marxist historical determinist theory, notwithstanding the efforts of the report's authors.

Furthermore, the long tradition of authoritarian rule (whether directly under military regimes or not) was accompanied by the evolution of what former President Duarte has called the "culture of violence." To maintain their rule, the caudillos felt they had to be repressive and they disposed of the lives of opponents or critics summarily. The "culture of violence" was, however, pervasive, affecting all levels of society; unlimited authority and cruelty were not a monopoly of those who wielded supreme power. Thus the humblest peasant, too, exercised the power of life and death within his own home, treating even his wife and children as mere chattel, exactly as he himself was treated by his overlords. Moreover, in a land bereft of major natural resources, the struggle just to survive was merciless and the people were not instilled with a high regard for human life other than their own.

Against this background—inadequately sketched in, I confess—one must ask: If the guerrillas came to power, would they be more tolerant of human rights than the present rulers? Would they be likely to foster more freedom and democracy?

The contrary would probably happen: the guerrillas would be more despotic than the "hardline military" (an inaccurate statement, in any case, since they were overthrown in 1979). The reason is not that they are more ruthless by nature but that they are motivated by an ideology that justifies tyranny: Communism. Communism is a direct descendant of traditional despotism but more dangerous because it dominates every single aspect of human life and thought—hence, totalitarian—and does so through a political machine that is monolithic, highly efficient, utterly ruthless, and motivated by a faith intolerant of all competition. The Soviet Union is, of course, the best example of Communist tyranny—and of its longevity. Failure to certify could doom El Salvador to live under that kind of tyranny.

But, argue opponents of certification such as the American Civil Liberties Union and Americas Watch Committee, the Salvadoran "left" is fighting a basically "repressive" regime intent upon perpetuating violence. Is that true? History, again, contradicts the ACLU–AWC version of the Salvadoran crisis. A truly repressive regime did exist previously under General Carlos Humberto Romero, but it was overthrown, not by the guerrillas but by reform-minded young officers on October 15, 1979. The date is highly significant, Mr. Chairman, for a junta took power then which was committed to push through a series of social and economic reforms including a land reform, as well as to eventual democracy. But on the very next day, October 16, the guerrillas rose up in revolt against the Revolutionary Government Junta, as it called itself. They did not wish to give the new government a chance to enact those reforms, preferring instead to throw the country into a state of wild turmoil and violence—persisting to this day—which could only impede any movement toward progress and change. That that was the guerrillas' objective is clearly explained by one of their top five leaders, Joaquin Villalobos, self-styled "supreme commander" of the People's Revolutionary Army, who has frankly stated:

"Perhaps one of the boldest steps we have taken is the insurrection of October 16, 1979, the day after the fall of General Carlos Humberto Romero's government. For 12 hours, and in some cases longer, we maintained the military occupation of various towns. . . . Why did we proceed in this manner? Because the situation was a guise of imperialism to deceive the Salvadoran people: to have united behind it would have singled a defeat, passing, if you like, but defeat nonetheless, of a revolutionary alternative . . . the necessary risks had to be taken, beginning with the loss of our cadres. . . ."

Villalobos added, with evident pride, that "The combative pressure of the masses plus the revolutionary actions of a military character hastened the crisis of the first ruling junta; the democratic officials resigned. . . ."

Such facts are not brought out in the ACLU–AWC report, which places the blame for the violence in El Salvador solely upon the shoulders of the governing forces when it was actually the Marxist-Leninists who precipitated it. They explain why the Marxist-Leninist guerrilla forces attempted to boycott the March 28th elections, threatened voters with murder and mayhem if they dared go to the polls, burned hundreds of buses to deprive them of transportation to the polling places, firebombed the capital and other cities night after night during the pre-election period, and on election day itself shot up polling places while the voting went on. The guerrillas, in fine, fear the democratic process and have made it, not repression, their main enemy in El Salvador.

What would be the consequences to the United States, Mr. Chairman, if the Congress chose to follow the highly tendentious route marked out by American Civil Liberties Union and Americas Watch Committee—and other groups like

them—and decided to oppose certification? If, in other words, it voted to withdraw military aid from El Salvador? In my opinion, the consequences would be felt far beyond the little country of El Salvador.

Let us, for a moment, imagine the following scenario:

Withdrawal of our military aid would automatically weaken the Salvadoran armed forces, and correspondingly strengthen the guerrillas. Those armed forces, let us remember, are already at a disadvantage since, in irregular warfare, the experts say they require 10 soldiers for each guerrilla under arms and they now have only five or six, I am told, for each armed guerrilla. So then, lack of U.S. military aid would render virtually impossible the enlistment and training of enough men to bring the Salvadoran army up to required strength.

Under such circumstances, the guerrillas would be able to plan their strategy and tactics accordingly, for a given period of time, and perhaps decide to occupy portions of the country which could be secured against a weakened army. In time, they could expand such occupied "free territory" and perhaps even set up a government there.

Meanwhile the army, increasingly concerned with the problem of insufficient manpower, training, equipment and guns as a result of the American withdrawal, might find it necessary to reject contact with the enemy in outlying areas and perhaps eventually shorten its perimeter; that, in effect, would be conceding those areas to the guerrillas.

Militarily, then, the guerrillas can gain territory without necessarily defeating the conventional armed forces, in effect sharing power with them. In other words, dual power would exist in El Salvador.

But not for long. The morale of the troops would be sure to drop as they gradually acquired the perception that the United States—the "Colossus of the North"—had deserted them. They would then be less willing to fight, and might even come to the conclusion that they, like the United States, should also desert the Army. The upshot could be defections to the other side, thus increasing guerrilla numbers.

The civilian population, always close to the armed forces since the soldiers are generally just peasants and workers in uniform, would likewise suffer a drop in morale. The consequences of that could be even more profound, since civilians are not bound by army discipline, and could involve defections to the guerrillas on a wholesale basis.

Such demoralization would not be without its effect upon both the economy and the political system.

In the first instance, withdrawal of U.S. military aid would soon be interpreted by the rumor mill to be but the first step to cancelling economic aid as well—otherwise why would it be withdrawn? Even if such a rumor were not circulated, the cancellation of military assistance would affect adversely business confidence in an already battered economy—why invest, if its military shield has been dismantled and it is virtually a prey to confiscation and collectivization? Obviously, falling business confidence would communicate itself to workers and peasants, with more unemployment the result.

All this would inevitably impact on the delicate political balance in the country, with the political parties heaping recriminations upon one another over the withdrawal of U.S. military aid. Sooner or later, deep fissures would open up and, finally, nascent democracy could become the victim. Quite possibly the authoritarian tradition would quickly reassert itself and the army, in a desperate attempt to maintain national unity in the face of a deteriorating military and economic situation, might decide to dissolve the Constituent Assembly and once more rule in its own name. End of the democratic experiment in El Salvador, return to repression—exactly what the guerrillas seek.

In that kind of situation, we could expect the more radical elements of the Christian Democratic Party—the largest in El Salvador and located just left of center in the political spectrum—to desert to the guerrillas in sheer disillusionment. Once more, the guerrillas gain numbers.

But the Army, beleaguered as it is, will not give up but will conduct a last-ditch effort to hold on to power. It has seen what happened to the National Guard in Nicaragua, and before that, to Batista's army in Cuba. Having no alternative but to fight in order to survive, it will give no quarter. Since the guerrillas will by now have the taste of victory in their mouths, they too will fight like madmen to seize power. The result will be a bloodbath such as the authors of the ACLU–AWC report and other certification opponents cannot conceive, given El Salvador's long entrenched "culture of violence." The country will be laid waste.

Or, this is a second possible denouement, the military collapses and the Communists take power, converting the country into "another Nicaragua" or "another Cuba."

Is either of these two scenarios what the Congress seeks? I cannot believe it does. But one or the other will result from failing to certify continued military aid to the Salvadoran Government.

Indeed, the consequences of failure to certify will extend far beyond the boundaries of El Salvador. It will be perceived in neighboring countries—Honduras and Guatemala next door, Costa Rica and Panama to the south, and Mexico to the north—as an expression of the weakness and unreliability for which the United States is rapidly acquiring a reputation nearly everywhere. Since those countries are already ridden by economic and political problems of varying degrees of gravity, such an action would undermine the democratic forces in them and correspondingly strengthen their opponents on the totalitarian left. The United States would then find itself facing a region, directly to its south, wracked from one end to the other by forces threatening to get out of control and capable of precipitating a violent upheaval from Mexico to the Panama Canal.

Obviously, a regional upheaval could have the gravest impact upon the United States itself, directly. It would not have to be Communist-provoked, Mr. Chairman, or even lead to the establishment of one or more Communist states in the region, to have such an impact. I am not, in other words, propounding a "domino" theory; rather, I am suggesting the possibility, perhaps even probability, of the region becoming totally unhinged and plunged into a state of chaos and internecine warfare. Of course that kind of situation is helpful to Communism, which feeds upon disorder, and would perhaps take on an anti-American character that could lead to the establishment of "other Nicaraguas" or "other Cubas" there.

In that event, there would be a rising threat to U.S. security, for Communism usually brings in its wake militarism. The Marxist-Leninists and their sympathizers in this country may rant and rave against the "repressive" Salvadoran military people, but in the last analysis it is they who produce garrison states. Again, we need only witness the Soviet Union, and now Cuba and Nicaragua in our own frontyard, both of them highly militarized. The last two countries, combined with the little island of Grenada in the southern Caribbean, comprise a Soviet-supported "triangular base," in the phrase of Lt. Gen. Walter Nutting, Commander-in-chief of the U.S. Southern Command in Panama. That "triangular base" already possesses sufficient air, naval and military power to reach into the southeastern States, Gen. Nutting warns. If its Nicaraguan beachhead on the Central American mainland is expanded, the threat to these United States is thereby enhanced.

Above all, there is Mexico to be worried about. I know you have probably heard a great deal about the danger of Mexico falling a prey to the extreme left, but I would like to add a word as a former resident of that country for 22 years. I have written more thousands of words than I can count, in articles and books, on Mexico's stability, and all of them I believe are true. But I know that Mexico, too, suffers from the "culture of violence," and less than three generations ago went through perhaps the bloodiest revolution of this century: it cost the Mexicans about ten percent of their population. It could happen again. I personally do not think so. But even if it doesn't, Mexico, as in the case of Central America on its southern border, could experience a political and economic crisis of such proportions that it could impact adversely upon the United States.

Mr. Chairman, chaos and internecine strife throughout the region just south of us could, even without Communist direction, produce economic dislocations of such profundity that we would become inundated with an unceasing flood of refugees—just to provide one example of the likely impact upon the United States. And what we are talking about is a flood reaching into the millions and totally uncontrolled. We saw in 1980 what confusion could be created in this country—not only within the federal bureaucracy but also in a number of cities and towns beginning with Miami—when a mere 125,000 Cubans were callously "exported" to the United States by Fidel Castro in the Mariel boatlift. Can you imagine successive waves of "Mariels" beating upon these shores one after another? I do not say it will happen, but it can.

If it does, God forbid, how would the Congress handle a catastrophe of such proportions? How could it possibly retrieve the ball it now has in its lap? Would it not be wiser to foresee the dire consequences of denying El Salvador military aid, and live with a situation that is manageable? Surely the best course is not to let the trees prevent us from seeing the forest, and get on with the larger

business of fostering democracy in El Salvador. Let us keep the faith with the 1.5 million ordinary Salvadorans who braved death and destruction so recently in the hope of attaining, some day, the inalienable rights of life, liberty and the pursuit of happiness through government derived from the consent of the governed.

The CHAIRMAN. Thank you very much, Mr. James.

Mr. Doherty, welcome here from the House of Representatives.

STATEMENT OF WILLIAM C. DOHERTY, JR., EXECUTIVE DIRECTOR, AMERICAN INSTITUTE OF FREE LABOR DEVELOPMENT, WASHINGTON, D.C., ACCOMPANIED BY FRANCISCO ZALDANA, FESINCONSTRANS; SAMUEL MALDONADO, U.C.S. OF SAN SALVADOR; JORGE CAMACHO, ACOPAI; AND JOSE LUIS GRANDE PREZA OF THE CONFEDERATION OF CHRISTIAN WORKERS

Mr. DOHERTY. In deference to the fact that I am late, I will submit my formal statement and will summarize it in just a few minutes.

The CHAIRMAN. That would be appreciated. Your full statement will be incorporated in the record.

Mr. DOHERTY. I am very pleased to be accompanied here today by the leaders of 500,000 campesino union members and other union members who form the United Popular Democratico, the largest single democratic body of people in the country of El Salvador. I am accompanied by, and I would like to put their names in the record, Francisco Zaldana, of the Fesinconstrans, Jose Luis Grande Preza of the Confederation of Christian Workers; Jorge Camacho, of the Acopai, another campesino group; and by Samuel Maldonado, who is the general secretary of the UCS of San Salvador.

The CHAIRMAN. We certainly want to acknowledge their presence here today, and express appreciation to them for meeting with the Members of the Senate and the staff yesterday. Your statement has been incorporated in the record, and I have summarized the conclusions, I hope accurately, that you gave to us yesterday. Thank you.

Mr. DOHERTY. Mr. Chairman, I am glad you did that. You have relieved me of the task of doing the same.

I should tell you, Mr. Chairman, that we are in complete agreement with their views, the views of the trade union movement of El Salvador regarding the issues that are before this body today.

With regard to human rights, it is a very difficult thing to call, because as they and we believe, any one single unjust killing of any person without justice, of course, has to be decried. We do not take great heart in the fact that the figures may have gone down from 1,000 a month to 500 or 200 a month. We know that it has to be stopped, and that all means have to be taken to stop it.

We believe that if it were not for the continued certification process that the Senate and the House do on the aid program to El Salvador, that maybe the human rights question would not be relieved, because of the terrible turmoil and the natural upheaval that exists in that country. There frankly is no system of justice. The courts do not operate. Justices do not hear cases, and judges are afraid to handle cases because they are either intimidated through threat or many of them have been killed, many of them have been chased from the country.

We have had three separate judges on the case of the murder of our two colleagues and the head of the Salvadoran trade union movement thus far, and we anticipate we will probably have more until they create a system of justice.

With regard to the land reform, there is no question that Mr. D'Aubuisson and his colleagues in the Constituent Assembly had torpedoed it and killed it, stopped it dead in the water, and sunk it as of May 18, 1982, with Decree Law 6, that made it impossible for the campesinos that were originally envisaged as the beneficiaries to continue.

Frankly, on May 25, the group that is behind me came to the United States. They met, Mr. Chairman, with members of this committee. They met with members of the counterpart committee in the House, and as a result of the action of Senators Dodd and Kassebaum, holding up the foreign aid, both military and economic, at that time, I think a clear shot was fired across the bow of Mr. D'Aubuisson and others in El Salvador that this body would not tolerate terminating the land reform process.

You gave them the power to negotiate when they got back, and they went into a process of negotiation, the union people from El Salvador, and late in the night of July 27, they were able to come to an agreement with President Magaña on a Decree Law 13, Executive Decree Law, which in fact abrogates the effects of Decree Law 6 and 11, which had stopped the land reform.

It is difficult for us to say that land reform has made progress. It has survived. And we think that with the continued economic assistance from the United States, that it will go forward.

I should tell you that those who primarily oppose economic and military assistance in El Salvador are led by Mr. D'Aubuisson and the reactionaries on the extreme right that feel that the United States is running an interventionist policy in El Salvador, that we are imposing reforms on the people of El Salvador as a condition precedent to the receipt of the aid. He has publicly stated that he can get $500 million from the Saudis and he does not want our military help. They would like to go it alone.

This is what puts a great fear in the hearts of the moderates as represented by the people that we work with down there, the workers and the campesinos, because a D'Aubuisson victory would mean that an oligarchy would return from Miami and the land reform would die, as well as all the rest of the reforms. We also know that a victory from the Marxist-Leninist left would have similar results. So, these people represent that broad center that need and continue to look forward to the support from the Senate and the House of Representatives and from the United States generally.

Regarding the murder of our people, we regret very much that more has not been done. It is now a year and a half. We sympathize very greatly with the relatives of the nuns, because we are in the same situation. We are trying to get justice out of the situation where justice frankly does not exist. A new committee has been established. There has been a new investigation of the people that murdered our people.

We now know who the people are that killed our people from the armed forces, the national guard. We actually know that higher up officials have been involved. We cannot reveal the names of the people or the details of the investigation because, frankly, we do not want to jeopardize the opportunity of having them placed under arrest.

I have on a private basis, Mr. Chairman, tried to keep you and Chairman Mike Barnes informed of the progress of the case, and we will continue to do so on a private basis. I hope the members of the committee will understand why we cannot go public with the information, because we would indeed jeopardize the results of the investigation.

Mr. Chairman, we would urge that future aid to El Salvador be conditioned on performance, so that we do not see this 6-month cycle of every time certification comes, people rush to put things together to make them look good.

We think that if you would condition aid in the future to so many titles being issued monthly, we have a figure that is agreed to between ourselves and our Salvadoran colleagues, along with Dr. Prosterman and Mary Temple, other experts in this area, that if 4,000 titles a month were issued, permanent titles, within 2 years phase III of the land reform program would be terminated successfully, and if you would condition your aid, both military and economic, to the level of performance, perhaps that incentive would do away with the necessity for coming back and watching them go through the facade of putting together a certification process.

Thank you, Mr. Chairman.

[Mr. Doherty's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM C. DOHERTY, JR.

Mr. Chairman, once again I would like to express the appreciation of the AFL–CIO and the American Institute for Free Labor Development for the honor of testifying before this Committee on the issue of El Salvador. In this, our third appearance, I would like to set before you the perceptions of the free and democratic trade union movement of El Salvador, four members of which are with me today at this hearing, regarding the problems and progress of the past 6 months in the five areas of concern identified by this Committee: human rights, control of the military, economic reforms, elections, and the investigations into the murders of American citizens.

Before offering our observations on these issues, we should note that the nature of our involvement in the crisis in El Salvador qualifies us more to comment on certain aspects of these multifaceted issues than on others. In the case of economic reform, for example, our experience has been limited largely to the land reform. In human rights, we can refer only to the experience of the rank-and-file trade unionists affiliated to the democratic unions with whom we cooperate. At the same time we make these qualifications we would remind the Committee that the unions we speak of represent over a half million Salvadoran workers, the vast majority of whom consider themselves without ideological or political bias, that is, favor neither dominance by the extreme right, nor a military victory by the Communist-led insurgents.

As a preface to our remarks I would like to read the translated statement of the Unión Popular Democrática, which summarizes their position on a number of key issues under consideration by this Committee. (See Attachment 1).

LAND REFORM

By any objective analysis, the previous six month period constituted a crisis of major dimensions for the land reform program. Having ourselves reviewed all the evidence we believe the question of whether the reform has progressed or regressed in the past reporting period to be of far less importance than the question of its future survival. If one seeks justification for cutting off aid, the action of the Constituent Assembly in May of 1982 provides it. On the other hand, as we will testify later in this report, several eleventh hour developments in the Presidential Palace have provided a basis for continued progress in the months to come. At this writing, the forces in favor of land reform in El Salvador have never been more united.

The progress of the land reform during this period, the details of which are contained in Dr. Prosterman's report, may be likened to a mythological sailing ship, navigating through waters controlled by hostile and (semi) benevolent dieties. On April 26, 1982, the ARENA–PCN controlled Constituent Assembly opened with a broadside (Decree 13) which blasted away the hull and steering mechanism, in that it abrogated the government's right to expropriate land for purposes of redistribution. On May 18 and 27, respectively, two other volleys sent the ship of land reform to the bottom, effectively suspending Decree 207 and putting in jeopardy the rights of all campesinos illegally evicted before that date. The passage of these three decrees, despite their ambiguous legal language, sent a clear message to landlords that the land reform would be abrogated. In the waves of evictions which followed, unprecedented numbers of Decree 207 provisional title holders were evicted from the land they had been told was theirs to farm.

On May 15th, as an act of protest against these debilitating measures, the Unión Popular Democrática, a coalition of democratic labor and campesino unions in El Salvador, traveled to Washington to present their situation before their North American trade union brothers. When the facts of these developments were made known to the U.S. Congress, the result was a reduction of $100 million in economic and military aid to El Salvador, plus the addition of an amendment which further protected the rights of land reform beneficiaries.

These sanctions by Congress produced the desired effect in El Salvador. Almost immediately, the army began to reinstall evicted Decree 207 beneficiaries, and the previously closed regional offices of FINATA opened their doors and began to receive new applications for title. Instances of new evictions decreased dramatically, and in July fell to negligible levels. The issuance of provisional titles, in the meantime was maintained at a more or less acceptable level.

These initiatives, by the UPD, the U.S. Congress, the Salvadoran president and armed forces, may be said to have refloated the land reform in the months following its sinking in May 1982. Last week, President Magaña signed a decree which further protects the beneficiaries of Decree 207 and lays the basis for continued progress in titling in the months to come. A copy of this new decree is included as an annex to this report.

As Dr. Prosterman's report amply notes, serious problems in the land reform remain. There are still almost 7,000 evictees whose land is presently being rented to other campesinos as a result of Decrees 6 and 11. Furthermore, the rate of new title applications has fallen off alarmingly, undoubtedly due to the effects of intimidation by landlords, and the belief, given credence by ARENA and PCN deputies, that the land reform has been abrogated. Clearly, to revive the process, decisive action is needed, on the part of the president, FINATA, and the armed forces.

As the most naive observer will note, many of the highly favorable developments in this most agonizing voyage of the ship of land reform have come to fruition in the final weeks prelude to certification. What we would like to suggest at this point is a process which, in lieu of stimulating progress on the reforms once every six months, maintains constant pressure on the Salvadoran government to implement the reform.

The AFL–CIO and the UPD (with the active participation and support of Roy Prosterman, of the University of Washington, and Mary Temple, of the Land Council) suggest a system of disbursement of aid proportional to the monthly achievement of land reform goals agreed to by the Government of El Salvador in the plan of action. Thus, the level of aid would be determined automatically by the Salvadorans themselves. These goals should aim at achieving, within a reasonable length of time, the issuing of provisional titles at the rate of about 4,000 per month, which was achieved by FINATA during late 1981. At this rate FINATA's previous annual goal of 50,000 provisional titles could be met, and titles to the remainder of the 150,000 eligible beneficiaries of Phase III could be completed within two or three years.

A State Department cable in late May, reported in The Washington Post in July, instructed the U.S. Mission in El Salvador to seek support of the Salvadoran Government for such specific land reform goals. Clearly they have been meeting with resistance, but we urge the Administration to continue to press for these goals. The land reform section of this State Department cable is attached.

HUMAN RIGHTS AND CONTROL OVER THE MILITARY

The collective impression of the Salvadoran unions regarding rural and urban violence in El Salvador is that there has been a significant diminution over the level experienced one year previous. The degree of harrassment of land reform workers and union activities also appears to be in a marked downward trend. This is not to say there have not been incidents; in March, for example, a UCS regional leader was murdered; in June, three promoters were assassinated.

To speak of "progress" on the part of the Salvadoran Government in any sense—in human rights, the reforms—one must first clarify which component of the government is to be held responsible: the provisionally appointed president and his cabinet, the military, or the Constituent Assembly. In El Salvador today, each of these components plays a critical role in shaping policy and in its execution. We believe it is critical for Congress and this Administration to identify which components of the Salvadoran Government have been making a good faith effort to comply with our conditions and not curtail the efforts of these elements in an effort to chastise those groups not in compliance.

In any case, it is increasingly our conviction that those groups most in opposition to our conditions have as their objective the termination of U.S. aid and the ultimate defeat of the force which argue for moderation.

ELECTIONS

On March 28th, over 1,500,000 Salvadorans bravely defied the Marxist-Leninist guerrillas' intimidation and went to the polls to elect delegates to a Constituent Assembly as a first step towards the drafting of a Constitution and the establishment of a permanent democratic government. At the request of the trade union and campesino movement of El Salvador, the AFL–CIO sent an observer team to those elections, and this team, along with the official U.S. delegation and the observers of many other nations and organizations, can testify to the legitimacy of the elections. The evaluations of two members of the AFL–CIO observer team are attached (Attachments Nos. 2 and 3) to this testimony. For the first time in their history the Salvadoran people have democratically elected their government. This certainly ratifies the correctness of the position taken by the AFL–CIO at its centennial convention of 1981, and is a victory for democracy in the hemisphere.

The guerrilla war continues, of course, and this should come as no surprise to those who understand the ideological makeup of the guerrilla leadership. The Marxist-Leninist leaders would not relinquish their quest for power simply because of their rejection in an electoral process. The continuation of the fighting and the refusal of the guerrillas to heed the recommendation of Archbishop Rivera y Damas to lay down their arms should serve to strengthen the determination of the United States to support the elected government of the newest democracy south of our border.

While the Assembly does not represent the political orientation that we in the AFL–CIO would have hoped for, we did not have a vote. The Salvadorans did—and this Assembly has a responsibility to interpret their collective will. We feel that the elected Assembly, since most parties campaigned on the promise to continue and to "perfect" the land reform, has failed to live up to this responsibility.

The UPD, in the past elections, asked the workers and campesinos to support the reforms and vote the candidates of their choice on March 28. They thus emphasized a large vote in favor of the democratic process. In the forthcoming presidential elections, they will forcefully recommend a presidential candidate to the more than 500,000 members, who are also voters, and who will hopefully vote again in 1983. The important thing is that the democratic process continues, and that workers and campesinos continue to have the right to cast their vote in free and democratic elections. United States policy should continue to support this process.

MURDER INVESTIGATIONS

The final area of concern we would like to comment upon is the progress toward the arrest and conviction of the murderers of Mike Hammer and Mark Pearlman of the AIFLD and Rodolfo Viera of the Union Comunal Salvadoreña on January 3, 1981. We are sure that the members of this Committee fully appreciate the extreme importance the AFL–CIO attaches to the investigation of these murders and will therefore accept that we cannot disclose information that would prejudice progress in this case. Both the United States Government and

the Government of El Salvador, however, are fully informed of all pertinent information which has come to our attention regarding this case, and the Government of El Salvador has set up a special task force to pursue the facts. We trust, also, that we have been kept fully informed by both governments regarding the results of this on-going investigation.

The special investigative commission or task force set up in El Salvador to handle this inquiry is made up of security forces representatives of sufficient rank to be effective and supported by competent professional and administrative staff. This group first met in May, 1982 to review in detail the results of all previous inquiries and has subsequently interviewed or re-interviewed a number of witnesses. Our representative on this case, himself an experienced and professional investigator, has informed us that he is satisfied with the progress made by this group.

Thus far, the work of the commission has independently confirmed much of the information previously developed but not made part of the official record. You may remember that on February 25th, our testimony revealed that there were both "civilian intellectual authors of the crime and (the) military personnel who actually pulled the trigger." The testimony further stated that the "evidence implicates high ranking officers of the security forces." Based on our current understanding of the situation, we are more confident than we have ever been that there will be arrests in this case and that the involvement of numerous co-conspirators will be finally a matter of public record.

We are aware, however, that this will represent only the first step toward justice. It is quite possible that there may be a need for extradition requests from El Salvador to the United States or other countries in order to bring all of the suspects within the jurisdiction of the Salvadoran courts. Also, there may be a need for technical assistance from the Federal Bureau of Investigation in processing physical evidence or in helping to determine the credibility of witnesses or suspects in their testimony. These are administrative problems that can be resolved. Ultimately, however, the judicial system of El Salvador will have to face the test of trying to successfully prosecute suspects from a segment of population which traditionally has been immune from any serious effort in this regard. This may be the most critical test of all.

We have often been asked if we are "satisfied with the progress" on this case. As impatient men confronted with a situation which requires extreme patience, our answer must be a conditioned affirmative. We will not be satisfied until all the persons responsible are brought to justice. On the other hand, we recognize the difficulty of the work of the task force and feel that they are making an honest attempt to complete the first step of a process that will evenually result in justice being done. We will continue to exert what influence we have toward that end and expect to receive the full and unconditional support of our government and the Government of El Salvador in this task.

Please allow us one final note with regard to the solution of the murders of Mike Hammer, Mark Pearlman and Rodolfo Viera. To us, they were dedicated and committed brothers. A year and a half ago hired gunmen deprived us and their families of their great humanism and companionship. None of the three murdered men, if they could speak to us today, would cry out simply for revenge. Rather, they would seek justice not only for themselves but for the thousands of Salvadorans who have suffered the same fate. And they would hope that their deaths had not been in vain; that through the investigation and prosecution of their case, the judicial system of El Salvador would be restored; and the campesinos for whom they died would then be able to live with dignity in a just society. This would have been their wish, and for Salvadoran authorities it is a challenge.

In summary, based on our close contact with the democratic union movement of El Salvador, which has served as the principal countervailing force to the right and left wing extremists trying to destroy that country, AIFLD and the AFL–CIO have concluded that while undeniable progress has been made in four of the five areas upon which U.S. aid is conditional, the question of progress on the land reform remains a matter of interpretation.

As stated previously, we believe the crucial issue at this juncture is not the progress of the past 6 months, but the future survival of the reform process and the consolidation of the gains of the beneficiaries realized thus far. We are convinced, in this respect, that a strategy which does not include U.S. aid is a bankrupt policy; one which will terminate all further positive U.S. influence. We believe this would be a grievous derelication of responsibility on our part, one

which would adversely affect the efforts of that vast majority of peace-loving Salvadorans, our union brothers included, still struggling for the democratic alternative. We urge both Congress and the Administration to look beyond partisan interest and together forge a policy which will preserve those elements in El Salvador today which truly represent the people's best interests.

I thank you on behalf of myself, the AFL–CIO and the trade union movement of El Salvador for giving us this opportunity to present our views.

ATTACHMENT 1

STATEMENT OF THE POPULAR DEMOCRATIC UNITY, U.P.D., RELATING TO RECENT DEVELOPMENTS WHICH AFFECT THE WORKING CLASS OF EL SALVADOR

The Political Committee of the Popular Democratic Unity (UPD), with the intention of clarifying to the Salvadoran people, and to other friendly countries who help us, the position of the representative union and campesino organizations of this country, wishes to make the following declaration:

1. The Popular Democratic Unity, U.P.D., is satisfied that the elections held on March 28, 1982 were conducted in a fair and honest way, and that the elected officials of the Assembly have therefore the right and responsibility of interpreting the collective will of the Salvadoran people.

2. The Popular Democratic Unity, U.P.D., calls upon the representatives elected to the Constituent Assembly to understand that the people of El Salvador gave them a mandate

(a) to establish peace and maintain justice within a legal framework,

(b) to create conditions conducive to economic development within the context of social justice applicable to the great majority of the Salvadoran people.

(c) to strengthen the democratic process by means of a new written political constitution and by guaranteeing the scheduling of general elections in 1983.

3. The Popular Democratic Unity, U.P.D., notes that the passage of Decree 3 gives current legal recognition to the decrees issued by the former Revolutionary Junta, especially Decrees 153, 154, 207 and 221.

4. The Popular Democratic Unity, U.P.D., aware of the need to increase production in general and agricultural production in particular, approves the position of the President of the Nation and the Armed Forces of the elected government for taking those steps which are necessary to achieve this end. We caution, however, that the gods of production must not be allowed to sacrifice the social progress of the people of El Salvador on their altars. We maintain that the causes of the current low production in the agricultural fields should be attributed to other factors and not to the Land Reform laws and regulations.

5. The Popular Democratic Unity, U.P.D., in every practical sense calls upon the Constituent Assembly to recognize that Decree No. 6 and its interpretation in Decree No. 11 has fostered confusion among honest private citizens and members of the High Military Command, and has led to a self-destructive interpretation of the law by some elements of the society who would like to reverse the social and structural progress made during the past two years, and reminds the Assembly that they were elected, in whole or in part, on their promises to implement the reforms for the good of the people.

6. The Popular Democratic Unity, U.P.D., notes the dramatic increase in the number of campesinos who have been deprived of their land by former land owners who have taken advantage of the confusion created by Decrees 6 and 11 to illegally evict the beneficiaries of Decree 207. We therefore support Decree 13 as a solution to this situation.

7. The Popular Democratic Unity, U.P.D., is concerned about the changes taking place in the different branches of the government, namely the dismissal of technicians and officers known for their dedication to the land reform process and their replacement with persons less than favorably disposed, and asks that the authorities do not replace such persons who at this very moment are contributing to the successful completion of the process, for its own sake and credibility, with the added participation of the legitimate representatives of the working class.

8. The Popular Democratic Unity, U.P.D., recognizes the efforts on the part of the administration to issue land titles and to restore the rights of the beneficiaries of Decree 207, and urges the government to speed up this process.

9. The Popular Democratic Unity, U.P.D., urges the government to intensify its search for the funds needed to pay compensation to the former owners of land affected by the Land Reform program.

10. The Popular Democratic Unity, U.P.D., as representatives of more than half a million Salvadoran workers from the urban and rural sectors, insists that the elected government of El Salvador seek to secure from national and international sources the funding needed to speed up the economic development of the country, which will ultimately be of benefit to the Salvadoran workers and campesinos.

11. The Popular Democratic Unity, U.P.D., considers it a matter of urgency for the Government, by way of the Constituent Assembly, to issue an agrarian union law in order to protect these campesinos who for some reason have not acquired land; this land would serve to ensure them social protection.

"For the liberty, real democracy, social justice, independence and national sovereignty of El Salvador." *Political Committee, Popular Democratic Unity, U.P.D.*

San Salvador, August 2, 1982.

FRANCISCO ZALDAÑA CABRERA,
Fesinconstrans.

JORGE CAMACHO,
Acopai.

SAMUEL MALDONADO,
U.C.S.

JOSÉ LUIS GRANDE PREZA,
C.T.S.

ATTACHMENT 2

[From the Free Trade Union News, April 1982]

A VOTE FOR ELECTIONS AND DEMOCRACY IN EL SALVADOR

(By Eugenia Kemble[1])

"We are full of hope that for all the parties this is the beginning of the democratic process in El Salvador. This election is a great satisfaction to us because we were not wrong. We have not lied. We have not taken advantage of anyone. The people were able to overcome all the obstacles. The people have used this vote to show that we can combat violence—that an election is stronger than taking up a machete."

Francisco Zaldaña, Secretary General of the Federation of Construction, Transport and Allied Workers of El Salvador, speaking to the leadership of Popular Democratic Unity, March 29, 1982.

Popular Democratic Unity (UPD), an alliance of unionists and their allies, had fought an uphill battle to convince foreign trade unionists, the media and politicians that the workers of El Salvador did indeed want an election. Many trade unionists from Europe and Latin America had been invited to come observe the elections and see for themselves. Only the AFL–CIO attended.

Despite the threat of serious disruption by the guerrillas and a tragic history involving the killings of its own Mike Hammer and Mark Pearlman in El Salvador, the AFL–CIO decided to respond to the request of the FESINCONSTRANS, a union of rural urban workers, for American labor observers to come watch the elections. In addition to this author, the group included Jesse Friedman, assistant director of the American Institue for Free Labor Development (AIFLD) who led the delegation; Jack Heberle, AIFLD's director of information services; and Robert Cazares, the organization's regional director for Central America.

The UPD's reasons for wanting AFL–CIO observers there were simple. First, they thought that if their members knew labor leaders from abroad were on the scene, it would discourage at least some of the threatened violence. In their view, a decrease in guerrilla intimidation would make it easier for them to encourage their members to go out and vote. Another reason, according to Roberto Castro, an advisor to the large, campesino-based Union Comunal Salvadoreña (UCS), was "when these elections are over the guerrillas and some Europeans will say they are a fraud. We need you to be able to comment on that."

---

[1] Eugenia Kemble was a member of the AFL–CIO's Observer Team on the El Salvador elections. She is special assistant to American Federation of Teachers President Albert Shanker.

Election day itself was an astounding vindication of all that the UPD had worked for. Its own informal network reported of instances where:

Shoes were piled high in places where people climbed the walls to get into the polling places.

People traveled in groups of 50 to 100 to the polling places so that they could protect each other from danger. Some started the night before.

Voters fled to their homes when guerrillas fired guns, only to return to the lines when the shooting stopped.

A woman gave birth in the voting line.

Voters chased guerrillas away from the polling places.

Voters abandoned a truck blown up while they were in it, only to continue their journey to the polling place on foot.

The AFL–CIO observer team saw evidence of the same enthusiasm and courage themselves. In Santa Tecla, just outside San Salvador, voters lined up by the thousands. Many climbed the fences surrounding the polling places in their enthusiasm to get in. At the Escuela Concha de Escalon, a school set up for voting in San Salvador, people stood in the boiling sun for hours, some having witnessed an exchange of fire between a helicopter and men on the ground as they waited in the early hours of the morning for the polls to open. At the gymnasium downtown, lines were so long that voting was clearly going to be an all day affair. There, AFL–CIO observers were greeted with shouts from voters who thought they might be reporters: "Tell the truth, tell the truth."

In San Miguel, a city in the eastern part of the country where guerrillas are strong, early morning gunfire did not seriously dissuade voters. Some who were running the election acknowledge that many voters might have been either scared off by threats or unable to come because of the destruction of transportation. One UPD activist said that the guerrillas had destroyed as much as 50 percent of the public transportation system nationwide in the weeks before the election.

Comments from voters on the electoral process were consistently supportive:

"I think it will be an orderly election. People have suffered from poverty and violence. Previous elections were fraudulent but this one will be fair. The people want peace."

"I am voting because I want the people's will to be carried out."

"I am very proud today to be a Salvadoreña—we don't know who will win, but these people are saying they don't want the guerrillas. Why should we negotiate with them after this election."

"We want peace and jobs."

"We do not want to go back to what it was like before 1979."

The successful election turnout of over 80 percent of the eligible electorate was at least in part the result of months of work on the part of the UPD, a coalition of a number of trade unions. Its members, including over half a million heads of households from democratic rural and urban unions and professional associations got together to pull the vote out and to convince potential voters that elections could be the key to gaining political protection for the land reform program and other measures that had been so beneficial to UPD members.

The UPD operation was extensive, and the work began early. Among its most dramatic accomplishments were two get-out-the-vote rallies, one in Santa Ana on December 20th, which drew 16,000 people; and another in San Salvador on March 13th, which attracted a crowd of 5,500. The rallies were supplemented with a UPD "Brigade of Popular Orientation," a core group of 50 UPD activists who told people where to vote and why it was important. According to Jose Luis Grande Preza, Secretary General of the Confederation of Salvadoran Workers (CTS) and a powerful UPD leader, the coalition's 50 campaign workers went to places like Chalatenango, Morazon, San Vicente and Ahuachapan. He was certain that these workers convinced at least 75 percent of those undecided about voting to go to the polls.

Beyond this centralized work, the UPD effort took many different forms in each of the affiliates. The Union Comunal Salvadoreña, for example, had meetings on the election with its 285 *promotores* (promoters or organizers), with 300 delegates from cooperatives and with 200 delegates representing its women's division. These people were urged to do their best to get the vote out. The UPD devoted special attention to the women's vote, regarding it as a largely untapped political force in El Salvador.

One of the more extensive UCS plans was worked up by Mario Arnulto Equizabal, organizer for campesinos in 96 cooperatives in the departments of Santa Ana, Ahuachapan and Sonsonate. Equizabal had targeted 67,000 potential voters on "reformed land." All of them were to be assigned transport in sugar cane loaders or in trucks leased from the cooperatives. Some would also go by foot. UCS had made arrangements to pay for all the transportation.

The FESINCONSTRANS, the Federation of Construction, Transport and Allied Workers, conducted a series of general assemblies in each of its major sectors: Instituto Salvadoreño de Transformacion Agraria (ISTA) employees, commercial workers, construction workers, cement products workers and workers in the country's soap plants. The union also had meetings involving all sectors in selected localities like San Isidro, La Libertad and La Popa.

ACOPAI, another UPD affiliate dealing with campesinos, set up a special contingent of 78 union activists to field check what was happening at the polling places. Some of the most detailed reports on voting that came back to the UPD came from this organization.

As for the process itself, election observers like Richard Scammon and Howard Penniman found the El Salvador set-up to be ingenious and basically sound. A number of provisions were set up to guarantee the secret ballot and to minimize the possibility of fraud or intimidation through violence:

All voters could vote in any department and at any polling place. If a department was not safe, the voter could go elsewhere. Voters seeking to avoid identification and intimidation could go to another neighborhood.

Identification cards, which all voters must have, were marked with invisible dye as proof of voting. The dye could only be detected by a special type of flashlight. The same dye was used to mark voters' fingers to prevent multiple voting.

Every party had the right to have observers at the polls.

Because there were no voter lists, pressured rounding up of voters was made virtually impossible.

Ballots were counted at the polling places in the presence of party observers and any international observers. At the conclusion of the count everyone involved participated in the drafting of a report on the vote and the events of election day. Each observers and election official for a given polling place received a copy of this report, before the ballots even left the polling place. With so many reports floating around, the kind of fraud that derives from secrecy, ballot box stuffing, the destruction of ballots, etc., was made virtually impossible.

Voting itself took place at a table with a three-sided screen around it to prevent anyone from seeing how the ballot was marked.

Members of the armed forces could not vote.

While some incidental lapses occurred—some flashlights didn't work, there were not enough polling places to accommodate all voters, some voters never got to vote, some polling places ran out of ballots—basically the system worked. Voters polled before, during and after the election testified that they thought the system was a fair one. AFL–CIO observers witnessed no irregularities. FESINCONSTRANS leader Francisco Zaldana noted, "My only complaint is that the official government mechanisms could not cope with the number of voters. I know many people who could not vote." Since the turnout was more than twice what even optimists predicted, this is the best kind of problem the election could have had.

While the UPD had never taken an official position in favor of a particular political party, the organization knew who its best allies were. UPD leaders both assumed and hoped that its members would vote for the Christian Democrats, the party it thought had done the most for land reform and other programs benefiting workers.

The UPD had no illusions regarding the strength of the Christian Democrats' chief rival, the National Republic Alliance (ARENA), the party of Roberto D'Aubuisson, a man widely suspected of engineering right-wing terrorism and killings. ARENA was obviously rich. Its posters and organizers were widely visible. It was able to get observers to nearly all the polling places. Its ads and its speeches were slick and effective. The UPD was disappointed in ARENA's showing, but not surprised. It even acknowledged that some compesinos might vote ARENA simply because they hoped the party would stop guerrilla violence.

Both before and after the election the UPD took the position that it was going to push its programs with whoever won, and regardless of the election outcome. It would insist on land reforms, trade union rights and civilian control of the army, and planned to press these essentials on whatever party or coali-

tion of parties gained control of the Constituent Assembly. UPD knew another election was yet to come, and had decided that the important thing was to establish themselves as a political force. (See box below for a UPD statement on the election).

Plenty could still go wrong with the election results, regardless of the overwhelming electoral mandate for the process itself. Other observers on the scene who had met with ARENA, the second ranking vote getter with 29 percent of the vote, had grim reports regarding that Party's intentions on land reform. While ARENA paid lip-service to support for land reform in its party platform, high level party functionaries also privately said they had no intention of implementing parts of the law which remain to be carried out. All parties who participated in the election recognized that there was enough popular support for land reform to make outright opposition to the program impossible. But, with the exception of the Christian Democrats, their commitments are at best lukewarm and the American government will have to take a tough stand in insisting that its aid be contingent on land reform progress.

The future for another UPD priority, civilian control of the military, and an end to renegade security forces and death squad killings of innocent trade unionists and workers, is unknown. The AFL–CIO is greatly concerned about this, having suffered the senseless killings of two of its own staff in El Salvador.

Opportunistic coalitions of the right may succeed in denying the Christian Democrats the degree of influence that their 40 percent of the vote should rightfully deliver. But so far, the correctness of their pro-election stance has given them the political and moral authority to demand that both the partisan weight of the vote and the process of the election itself be respected by all parties.

Why has this election created at least the possibility of a democratic alternative in El Salvador?

The size of the turnout alone amounted to a total rejection of the guerrillas' claim to have a hold on the hearts and minds of the people. More than four-fifths of the eligible electorate thought that one of the six parties running offered them a choice about the future that was better than any alternative offered by the violent left.

The Army, as it promised, remained basically neutral. There have been no coups or threatened coups, no major charges of fraud or fixes. Even the UPD, whose leaders are in many cases successors to those they believe to have been killed by some elements of the armed forces and right-wing death squads, had this to say in its post-election statement: "We recognize the positive conduct adopted by the members of the Armed Forces, at all the places that the UPD was able to observe during the voting process."

While the media looked hard for and found instances of ballot shortages, voters who could not vote and other examples of disruption, no political party or interest group inside El Salvador—not the trade unions, not the Catholic Church—has charged that the election was fraudulent or illegitimate. The process was open and had many internal checks. But more importantly, the size of the turnout and the attitude of the electorate was so overwhelmingly supportive as to shrink the claims of the nit-pickers into frail insignificance.

All parties to the election, even the right-wing National Republican Alliance (ARENA), have felt compelled to at least say that many of the Christian Democratic reforms must continue. There will be efforts to roll them back, to be sure. The United States government will have to press hard through its aid leverage to preserve what is good about them.

The quick and predictable reaction of some of the election's detractors give off the sounds of a desperate and whimpering defeat. The charge of Nicaragua's official government newspaper that the voting was "a ridiculous electoral farce," or of the Socialist International that the "so-called elections . . . provided no solution to the terrible ravages of civil war," betray a total lack of interest in the popular will. While Nicaraguan censors were cutting such headlines as "Citizens line up to vote despite the danger—the vote wins in El Salvador" from that country's only opposition newspaper, the Socialist International was arguing that "The Sandinista Government of Nicaragua must be supported in its commitment to pluralism and social justice, to democracy and nonalignment . . . " The sources of these comments are hardly convincing election observers. They support a simple formula: all elections after "the revolution" are unnecessary and all those before are invalid. In other words, why have elections at all?

Commenting harshly on contacts abroad who had refused to believe in the election route, one UPD activist wrote in his post-election analysis: ". . . we

should not lose one single second bombarding information on the deceived Europeans, who have been fed with all kinds of misinformation conveyed to them by the 'school of lies' (Communists). We should take advantage of this instance now to inflict upon them a formidable blow from head to toe."

Those in this country who argued for an American policy or reform and who supported democratic elections before accepting the blackmail of being brought to the negotiating table at the point of a gun were right about what the Salvadoran people wanted. Those who wanted to decide what solution is best for El Salvador before March 28th ought now, at least, be willing to recognize that nine out of ten voters voted for the electoral process as a first step toward solving that country's problems. And while it is still possible for the results of that election to be thwarted or distorted, nobody can deny that an election was the people's choice.

ATTACHMENT 3

[From the AIFLD Report March–April 1982]

AFL–CIO DELEGATION VIEWS SALVADORAN ELECTIONS

(By John Heberle, Editor, AIFLD Report)

On March 28, 1982, after a history replete with electoral fraud and military-oligarchy domination, the masses of El Salvador went to the polls in one of the nation's first free elections conducted under procedures in which the voters had faith. The massive turn-out, plus the tenacity with which voters braved violent guerrilla threats, long waits, and disrupted transportation systems in order to vote, made clear that Salvadorans desperately want free elections and democracy.

On hand to observe the election was an AFL–CIO delegation consisting of Eugenia Kemble from the American Federation of Teachers, plus Roberto Cazares and myself from the AIFLD. What we witnessed was an inspiring demonstration of how much democracy means to a people who have lost enough victims to bullets, and see ballots as an alternative.

One key to the success of the election was the credibility of the procedures worked out by the Salvadoran Electoral Commission. Its chairman, Jorge Bustamante, had a reputation for honesty and political neutrality, and his success in devising objective procedures is dramatized by the fact that none of the losing parties cried "fraud" after the election—almost a record in Latin America.

That the election was held as promised indicates the true commitment to democracy by the Christian Democratic Party in El Salvador and its leader, incumbent President Jose Duarte. Bearing the burden of incumbency, especially those of the physical insecurity and economic recession prevailing in the country, the Christian Democrats must have felt some temptation to postpone the elections, and guerrilla threats and European opposition to the elections provided ample excuses for postponement. Nevertheless, President Duarte went ahead, accepting the political risks involved, and let the people decide who would lead the government in its on-going contest with the guerrillas.

The 80% turn-out was not only an affirmation of democracy, but also a repudiation of the guerrillas, who used all available means to disrupt the elections. They destroyed buses in large numbers, so that people had to hike to the polls. Their clandestine Radio Venceremos called for a boycott of the elections. Walls were painted with the threat "Vote in the morning—die in the afternoon". Guerrilla attacks were increased on election day, and many voters waiting in line were within earshot of automatic rifle fire. The threats seem merely to have increased the people's determination to vote, and the resultant record turn-out was a major political defeat for the guerrillas.

The dominant issue in the election was simple: peace. The voters were seeking a way to end the violence which had taken 16,000 lives the previous year. Many voters expressed to us their desire for "a strong man" who could maintain order. The incumbent government of President Duarte had been able to control neither the guerrillas nor the rightist death squads. The rightist parties made good use of the popular yearning for security by promising more effective prosecution of the war against the guerrillas.

The second most important issue was the economy. The PDC record during the last two years had been far short of inspiring. More than 500 business firms had closed their doors and left the country. Investment had been slowed

to a trickle. Unemployment was rampant. The voters wanted a change, and many voted for the rightist parties, hoping for a better economic performance than that which the Christian Democrats had provided.

A third issue was the program of land, banking, and commercial reforms begun by the Christian Democrats. Only one minor party campaigned against the reforms, so many voters took continuation of the reform program for granted, and made their decisions mainly on the basis of the security and economic issues. Most of all, though, they voted to substitute ballots for bullets.

ATTACHMENT 4

TEXT OF LAND REFORM SECTION OF U.S. STATE DEPARTMENT CABLE TO EL SALVADOR EMBASSY

SECTION C—LAND REFORM

Agrarian reform was started by the Junta as a major socio-economic initiative which the U.S. strongly supported. We want to see Phases I and III of the agrarian reform carried through as thoroughly and efficiently as possible. We favor implementation of Phase II on a voluntary basis, given funding and management constraints.

In view of Constituent Assembly moves to modify Phase III, we should assure that its central essence (individual peasant ownership of land) is maintained. We hope that the Government of El Salvador will provide secure tenure to all small farmers who qualify under Phases I and III (estimated at 68,000 and 125,000 respectively). We will provide assistance to help insure adequate production inputs and marketing arrangements. During 1982 we would hope that the GOES can provide titles to all Phase I cooperatives for which compensation has been paid to former owners (90 estates have been paid for so far but only 4 titles have been issued) and issue at least 35,000 additional provisional titles under Phase III.

2. For Phase III we hope the GOES will remain committed to the targets already established for 1982—50,000 applications, 35,000 provisional titles, field inspection of 20,000 parcels, 12,000 definitive titles and $16,000,000 in compensation. For Phase I, an additional $33,000,000 in GOES funds is needed for compensation and Agrarian Reform Fund debt service. In sum, $49,000,000 for compensation in 1982 should be included in the Provisional Government's budget, along with a satisfactory schedule of compensation payments. We expect higher targets and compensation payments for 1983.

3. If the GOES is to achieve the above level of implementation in 1982, it will have to take additional steps to overcome continuing landlord obstruction, lack of security for the peasants and technicians involved in the land reform and institutional weaknesses of the GOES implementing agencies. The Embassy should recommend specific steps which the GOES should take to overcome these problems and propose how the U.S. Government can help. We should stress to the key factors in the new government the importance of publicly and continuously reaffirming its commitment to the land reform (Phases I and III) perhaps through occasional public statements that the reforms are irreversible and will be pushed to completion. In addition, we must continue to impress upon the new government the importance of addressing the security problem by utilizing the security forces to enforce the law, bringing illegal evictions to an end and reinstating those small farmers already evicted.

Finally, we must continue our efforts to persuade the GOES to provide qualified Salvadoran personnel and adequate financial resources to meet the land reform targets. This includes funds to provide timely compensation to owners subject to Phase III.

4. Given Congressional and Administration interest in political and human rights developments in El Salvador, we believe status of implementation of the above program should be reviewed regularly. Would appreciate Embassy preparing a brief monthly assessment of implementation for review by Department Working Group. To aid Embassy in this task we are considering establishing a senior officer position at consular level to serve as a mission coordinator to work with implementation problems in this program. Careful monitoring will insure that impetus for improvements is maintained and that necessary pressure is maintained for necessary follow-through efforts.

(Signed) HAIG.

ATTACHMENT 5

(Translation—Excerpts)

EXECUTIVE DECREE No. 13

"Art. 34.—Beneficiaries of Decree No. 207 who for any reason have not exercised their right to acquire preferential possession and ownership of land or land parcels expropriated by the competent ministry in favor of FINATA, may do so until March 3, 1983, pursuant to the said decree and this regulation."

"Art. 35.—If for any reason a beneficiary who has already received a Provisional or Final Title, or who has submitted a title application, or who has not as yet submitted a title application, or who has been deprived of the land tenancy or any other rights contemplated in Decree No. 207, its regulations, and other pertinent laws, FINATA, upon request of an interested party, will request the assistance of the Public Forces to be extended through the Ministry of Defense and Public Safety, to guarantee the exercise of such rights.

In addition, FINATA should request the assistance of the General Fiscal Bureau of the Republic in cases of violation of standing legal provisions."

Issued at the Presidential House, San Salvador, on the twenty-seventh day of July, nineteen hundred and eighty-two.

(Signed)

ALVARO MAGAÑA,
President of the Republic.
RAUL MOLINA MARTINEZ,
First Vice President.
GABRIEL M. GUTIERREZ CASTRO,
Second Vice President.
PABLO M. ALVERGUE,
Third Vice President.
MIGUEL MUYSHONDT YUDICE,
Minister of Agriculture and Cattle Raising.

The CHAIRMAN. Thank you, Mr. Doherty, very much.

We will go on the 5-minute rule, as we did this morning.

Professor Anderson, could you describe in your judgment the cause of the five-man junta fall, and describe in a few words the effectiveness of that government?

Mr. ANDERSON. You are speaking, Senator, of the first junta that came to power after the October 1979, revolution?

The CHAIRMAN. The Jose Napoleon Duarte junta.

Mr. ANDERSON. His junta, of course, did not fall. It simply ended when the elections took place.

The CHAIRMAN. Well, then, can you go back to the original junta then?

Mr. ANDERSON. Yes; I think that is a very good point.

The CHAIRMAN. That was the 1979 one.

Mr. ANDERSON. Yes; because the reason for their fall is symptomatic of the basic problem of El Salvador. They tried very hard to arrange a truce between the guerrillas and the military, and this truce lasted from mid-November to the end of the first week in December 1979, and contrary to what I have heard here, it is my interpretation it was chiefly the military that broke that truce by several exemplary massacres of the usual type, destroying a couple of villages in the central part of the country.

So, the members of the junta and the cabinet were very indignant. They went to the officers of the army. This was on December 27, 1979. And they held a meeting with the military high command, with Eugenio Vides Casanova, with Colonel Garcia and the other leaders of the military, and they said, you must obey the orders of the junta

and the civilian government, and one of the soldiers, I am told on good authority by someone who was there, replied to them in this fashion, if not in these exact words: We have been running this country for 50 years, and we are quite prepared to keep on running it.

After 4 more days of negotiation, the junta fell, early in January of 1980.

The CHAIRMAN. Mr. Doherty, yesterday, the present labor union leaders indicated to Senators and staff that the military has turned out to be and is now in effect their ally in the process of land reform and facilitating their participation in the political and economic system of El Salvador. Is that correct?

Mr. DOHERTY. We are not too sure that the marriage has been consummated. Indeed, the military and particularly the army received a great lesson when, in mid-May, because of the destruction of the land reform process, both the House and Senate not only cut military aid but voted to suspend it, they have tried to get on the right side of this issue, and frankly, of the some 10,000 estimated evictions that have taken place since the elections on March 28, it is now felt that about 2,500 campesinos have been put back on the land at the insistence of the military.

And in the Executive Decree Law 13, to which I just referred, article 35, and I am submitting these laws as part of my testimony, it is stated that the military will be given the responsibility for making sure that all other evictions that have taken place will be corrected by the people being put back on the land, and the military has been given that power now by the civilian authorities in that country.

They feel that the military is starting to conduct itself as if it wants the support of the people, and they welcome this change, because many of the abrogations of human rights in the past have taken place as a result of elements of the security forces killing people.

The CHAIRMAN. Dr. Halperin, would you care to comment on Mr. Doherty's assessment and the assessment given to us by the present union leaders? And perhaps Mr. Finn would like to comment as well.

Mr. HALPERIN. I am sorry. On the assessment of——

The CHAIRMAN. To comment on the assessment that was just given to us of the role of the military in backing land reform and encouraging participation of the peasant population in the political and economic processes.

Mr. HALPERIN. I think it appears to be the case that the military have gotten the message that military and economic aid from the United States depends on the continuation of the land reform program, and I think because of that they are in fact supporters of the land reform.

The CHAIRMAN. So that you would say that as of now, for whatever reason the process has worked, and is working.

Mr. HALPERIN. As long as this committee makes it clear that military aid depends on land reform, I think that they will continue to support it, and I would like to endorse the suggestion that was made that you condition future military and economic aid at the very least on specific progress, on specific numbers in terms of titles in the land reform program, and I would like to see it conditioned on specific criteria in the other areas as well.

The CHAIRMAN. Yes. Mr. Finn?

Mr. FINN. I would like to say that our findings support exactly what William Doherty has said, and I would like to say that our evaluation flows from that. Given the cultural conditions in which the military has existed in El Salvador for a long period of time, to which Mr. James has alluded, the particular support which they are now giving to the land reform program is remarkable and significant.

Now, it remains to be seen, of course, how far that will proceed. Here, we also agree that the leverage which is provided by congressional action is extremely important here. We would like to see that leverage continued.

The CHAIRMAN. Mr. James, could you compare and contrast the reporting methods used by Socorro Juridico and its successor and those used by the U.S. Embassy, any comments you would care to make to evaluate the reporting methods that have been used?

Mr. JAMES. Frankly, Mr. Chairman, I have not come across any really authoritative, reliable, and accurate reporting methods on the part of anybody, whether it be the U.S. Government or these private agencies. I simply feel that it is impossible under the circumstances, just from sheer lack of personnel, of trained information specialists, of people able to get around the country—lack of normal communications. From those points of view, I think it is just impossible to come up with any accurate total.

Yes, of course, there are indiscriminate killings. Undoubtedly, the armed forces and the security and paramilitary services have been guilty of many of them. I would not doubt that for one moment, and I have said so in my prepared statement. So have the guerrillas committed indiscriminate killings.

Now, interestingly enough, nobody has attempted to gain access, or if they have tried to gain access, they have not succeeded, to guerrilla sources in order to determine what have they been doing. Very often, they use civilians as their shields, so that the military coming into a given village finds itself unwittingly shooting at innocents which have been put up there by the guerrillas. This has happened on numerous occasions.

I would therefore question all sources I have heard of which purport to have accurate information on indiscriminate killings in El Salvador. I would simply assume that such killings do take place, that evidently they have gone down somewhat now, but by how much I do not know.

Mr. HALPERIN. Mr. Chairman, can I have just a second to comment on the charges that have been made about the report that we submitted? We relied on the figures of the legal aid office, because we believe that they are accurate in the sense that what they report has in fact occurred. It is clear that many more people are killed that they do not know about.

My understanding is that the criticism of the archbishop, the acting archbishop, of their figures was not in the accuracy of the numbers that they reported, but rather their unwillingness to report on the guerrilla murders, and the new organization that has been set up is now reporting both sets of numbers, but the archbishop has continued to rely in his homilies on the numbers that they publish. We believe that they are accurate, because we believe they are based on reports

from the families of people who were in fact taken away and murdered.

The CHAIRMAN. Dr. Halperin, let me ask you a three- or four-part question on the judicial system, just so that we better understand that and have it on the record. Do you agree that the judicial system in El Salvador has been nearly destroyed? Did it function effectively prior to the 1979 revolution? Has there been a great deterioration since then?

Then, could you give us your judgment as to whether or not we could really expect a judicial system to effectively function in El Salvador in the midst of the kind of civil crisis that they are going through? And, finally, what kind of guarantees would be needed to assure the effective functioning of the judicial system in El Salvador?

Mr. HALPERIN. The civilian judicial system is clearly not functioning. There are two different problems here. One is the problem of securing the arrest and the conviction of members of the armed forces or others who have murdered civilians. That system is clearly not functioning, as we have seen in the various investigations.

The second is the question of the system of justice that is used by the government against civilians that it suspects of being in league with the guerrillas. That system is not working in a different sense. People are put in jail. They are tortured. They have had the rights which the Constitution of El Salvador guarantees to them stripped away by a decree of the original junta which has been continued by the Constituent Assembly.

I do not think one can expect a perfect system of justice during a civil war, but I think one can expect equal justice, and I think what one can expect is that the Constitution of that country, which assures due process, which guards against torture by requiring that confessions cannot be used, and so on, be reinstated, and I would like to see this committee insist that the Decree 507 be vacated, and that the rights which exist in the Constitution be applied for all people who are suspected of crime, not just those who are accused of killing Americans.

The CHAIRMAN. Thank you very much.

Senator Pell?

Senator PELL. Thank you, Mr. Chairman.

Am I not correct in saying that so-called Decree 507 is almost an invitation to torture, because it permits a confession by a prisoner just witnessed and in the hands of the police to be evidence for the judge?

Mr. HALPERIN. That is my understanding, Senator.

Senator PELL. Is it your understanding this has been used on many occasions?

Mr. HALPERIN. Well, nobody, as far as I know, has actually been brought to trial. People have been held under the decree. People have been tortured. But the system has not worked in the sense that they have actually been brought to trial.

Senator PELL. What is the custom with regard to taking prisoners? Do the Salvadoran military troops take prisoners? And if so, how many POW's or whatever you would call them are there in jail at this time? Does anybody know on the panel? Does anybody have any view? Mr. Doherty?

Mr. DOHERTY. I cannot give you an expert reply, but I can give an example of some prisoner taking. Some 25 guerrilla leaders have been taken prisoner and then claimed amnesty and have been given amnesty

because they are members of Mr. Grande's union of campesinos, and have been given protection under this amnesty decree, and are working on the land reform program in one of the cooperatives under phase I. They had previously been prisoners.

Now, how many prisoners are taken, or whether it is an equitable system, I make no claim for that. I just know that there is that one case, at least, where prisoners were taken and have taken advantage of the amnesty declaration.

I would like to, if I may, with regard to the comment on the system of justice, because I agree with much that has been said, give the committee the benefit of a vignette that took place last year in a meeting between President Kirkland and myself, President Duarte, and his entourage when they were here. We were complaining very vigorously that there had not been enough attention paid to the solution of the murder of our people. President Duarte himself turned to President Kirkland of the AFL–CIO and said, "You must remember that the judical system of our country as a matter of tradition has been established to catch chicken thieves, not murderers," and frankly, he did not say that in a jocular fashion.

He meant that the whole system of justice was created to protect the property rights of a narrow oligarchy that had imposed a very unjust system on the people.

Senator PELL. Are there any other members of the panel who have any views on the POW question?

Mr. ANDERSON. I could give you one instance of the efforts of the Salvadoran army in that regard. I do not think they generally take prisoners. I remember on the day of the election in March out at San Antonio Abad on the outskirts of the city, here was a group of guerrillas who made an incursion into that town. They said there were 12, I believe it was, guerrillas in the group. All 12 ended up dead. Not a single one was just wounded. They were all dead, from the pictures that we were shown on television. I do not think it is the general custom of the army to take prisoners except when they have a special reason for doing so.

Mr. HALPERIN. Senator Pell, there is, of course, the now famous cable from the State Department to the Embassy in which the statement is made that the military in El Salvador does not take prisoners, and if the committee does not have a copy, I would be pleased to provide one for you for the record.

Senator PELL. Thank you very much, but I believe we do. Let me reverse this. Do the guerrillas ever take prisoners? Is there any knowledge on the part of any of you with regard to that?

[No response.]

Senator PELL. So the presumption is, they do not either?

Mr. DOHERTY. The Under Secretary of Defense evidently has been captured as a result of a helicopter that was shot down, and I presume they still have him.

Senator PELL. I think some time back, about a month ago, there were reports that the ICRC [International Committee of the Red Cross] representative wanted to leave El Salvador because of the question of prisoners. Then, a couple of days later he said it was all a canard, he was really going to stay, and there was nothing to it. Do any of you have any knowledge of this episode?

Mr. HALPERIN. That is what the cable was about, Senator. The cable was from the State Department to the Embassy, saying that the Red

Cross was threatening to leave because prisoners were not taken, and the way the cable is written, it suggests that the State Department agrees with that.

Senator PELL. To the best of your knowledge, is the ICRC man staying there now? Do you work with him at all, the American Civil Liberties Union?

Mr. HALPERIN. No.

Senator PELL. Do any of you know whether the ICRC man has full access to the Salvadoran detention facilities?

[No response.]

Senator PELL. From the viewpoint of certification, do you believe that a smidgen of progress meets the requirements, or do you think that it should be in a proportional degree?

Mr. JAMES. Senator Pell, if I may be permitted a brief answer, I think that we have to have a lot of patience in this particular situation. I think we have to be mature about it. I do not believe we have a right to expect, as I indicated in my previous remarks, that in a matter of months, or even 3 years since the 1979 coup, Salvadoran society is going to change radically when for some 450 years it has been dominated by authoritarian traits and customs that run throughout the whole society.

We are not talking here just about the oligarchs. Even the humblest peasant is the lord of his home, and can virtually dispose of his wife or his children or his relatives as he sees fit. This is in the nature of Salvadoran society, as it is also in other Latin societies.

I think therefore it is ludicrous for us to sit here and attempt to foist on this society, overnight, values which it took us several hundred years to acquire. Therefore, if we can say there is a smidgen, as you put it, of progress with regard to human rights and land reform and other signs of necessary change, I think then, fine, and we should press for more.

Agreed, the certification process is a very healthy one. Congress has been very wise in instituting it. It also keeps the administration on its toes. But let us not expect miracles overnight. We have to be patient, understanding, and work along with it while pressing on.

Senator PELL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Pell.

Senator Hayakawa?

Senator HAYAKAWA. Thank you, Mr. Chairman.

The first question I want to ask is simply a question of fact. This Dr. Prosterman, is he the same Dr. Prosterman who was involved in the land reform program in the Philippines and later on in Vietnam?

Mr. FINN. Yes.

Mr. DOHERTY. I think so, yes.

Mr. FINN. He is.

Senator HAYAKAWA. Was he personally in El Salvador?

Mr. DOHERTY. Many times.

Senator HAYAKAWA. Well, that gives me some assurance as to his professionalism in this area.

This morning, General Nutting testified that the soldiers are learning that it is conditions and not Communists that make insurgency possible. Would you agree with this statement? I ask any of you.

Mr. FINN. I would like to reply to that, and I would like to agree with that statement. I think it is unfortunate that people are often asked to choose between conditions which cause insurgency to grow, as if you have to choose between indigenous sources or outside external forces which are Communist. In fact, both are operative. The conditions are there first, but they can be exacerbated, as they have been, by external forces.

Senator HAYAKAWA. And General Nutting testified that in all of the years since 1962 there has been a steady intrusion into the Western Hemisphere of national and international power elements much more than military, political, economic, and psychological, involving Cubans with well equipped regular militia, land, sea, and air forces, and so on. In other words, there has been an infiltration throughout Central America, according to General Nutting, of a tremendous economic, political, and military pressure in this region.

Now, to what degree does the insurgency or are the problems that we are confronting in Central America attributable to the Cuban/Soviet interference with circumstances there, and to what degree does it arise out of local discontent with whatever the circumstances are there? Or is it a mixture?

Mr. JAMES. I would say, sir, that there is a lot of interfacing that goes on there. Yes, you do have bad, deplorable, indigenous conditions existing, but also you have very educated, intelligent people with an ideology who go in there and know how to exploit those conditions. I have just spent 5 weeks in the area. Take a country like Costa Rica, which has a long democratic tradition.

Senator HAYAKAWA. Yes, indeed.

Mr. JAMES. And this, you would think, would be a perfect case for saying, well, there can be no Communist or other subversive problem here. But you talk to the leaders of the Costa Rican Government who, incidentally, are more than liberals—they are social democrats, considerably to the left of center. Yet they will tell you, as President Monge did in an interview I had with him some time ago, that they are in danger of being terrorized and subverted by the Marxist-Leninists from without, and he referred specifically to Nicaragua and Cuba, as well as by those from within.

Now, this is happening to a democracy, because democracy is something, as I mentioned before, that the Communists oppose even more than they do repressive regimes. So, you do have that overlay of Communist efforts. They are very highly organized—better organized than anybody else. They know what they want. And they are fanatics—they work at it day and night. And so they do score certain successes, and they can overturn democracies as well as dictatorships.

Senator HAYAKAWA. I wonder if I might have an additional comment from Mr. Doherty or Mr. Finn.

Mr. DOHERTY. Senator, I appreciate the opportunity to comment. I believe that there is a concerted effort on the part of international Marxism-Leninism to penetrate and capture the countries of this hemisphere, frankly, including our own if they could. This is the dedicated intent of their party line and has been for 70 years. It is not going to change. They do take advantage of miserable conditions by offering to the workers and the campesinos a better way of life. Now, they

have never created a society of their own whereby they have been able to demonstrate that life is better in a Communist society.

I guess you eat well in the Soviet Union as long as we keep on extending our grain agreements. They have not been able to feed themselves for 70 years.

I can assure you that the standard of living in Cuba in the year 1959 was the highest of all of Latin America, perhaps with the sole exception of Argentina. The wages of the workers, even the sugar cane workers, were amongst the highest, and the standard of living was the highest. Cuba did not slip into the hands of the Communist orbit because of its miserable conditions. Not that they were perfect. It slipped into the Communist orbit because another prevailing condition allowed that to happen, namely, the lack of political freedom. The dictatorship of Batista, which I am afraid is the same thing that a gentleman like D'Aubuisson might like to bring about in El Salvador, if we do not keep an eye on what is happening, caused many young people who wanted political expression to turn to the 26th of July movement. Many young people, I will tell you, were well off, the youth of the middle classes and upper classes who wanted political freedom.

So, it is not just a question of economic depravity and social conditions, but it is political freedom that often those who want change take advantage of, without pointing out that when they accede to power, you end up with a 20-year dictatorship like that of Fidel Castro.

So, I think these are all complicated issues that have an interplay, and you will have to keep your eyes on all of them. But I also believe that it has to be the concerted effort of the foreign policy of this Government to always try to help the people of our sister republics to enjoy a better standard of living with decency, both with political freedom and economic opportunity.

Senator HAYAKAWA. Thank you, sir. Thank you very much.

Mr. FINN. May I follow up on that, Senator? Supporting that, I would also like to make some comment about the constituency or degree of support that the guerrillas have. They have failed to gather a large amount of support either politically or militarily. They attempted an offensive in January 1981, and they expected an uprising in the country which did not take place. They predicted and expected a low outturning in the election of March of this year, and decided not to participate in that in any way. They did not even call for casting of null or void ballots, which is a frequent way of participating.

If we were to afford to the left wing, the guerrillas all those votes or ballots which were null or void, a very generous way of estimating indeed, they would have 9 percent support in that country. I think this has a bearing upon what we can expect and whether we would be for negotiations with that group or not.

I would elaborate on that, but I just want to emphasize that they have failed, both politically and militarily, to gain and show that they have support in that country.

Senator HAYAKAWA [presiding]. Thank you, all of you. Thank you very much. I would like to hear so much more from each one of you, but I am afraid that we are constrained by limitations of time. That is one of our misfortunes around here. This is my second hearing on El Salvador today, and I have been through two also on the situation in Lebanon, and on top of that there have been other hearings

on other subjects. When we are lucky, we have to be in only two places at once in the same building. When we are not lucky, we have to be in three places at once in three buildings. We are all handicapped by these kinds of conditions.

Senator Dodd, I believe it is your turn.

Senator DODD. Thank you, Mr. Chairman.

First of all, I want to thank all of you for coming here this morning. Mr. Chairman, I particularly want to take note of the presence of Dr. Anderson, who is a constituent of mine from the State of Connecticut, and a well-known academician. In fact, his book, "Matanza", is considered one of the pioneer works on El Salvador. I do not know of another work that really deals with the period of time that he considers in as much depth or with as much thought as his particular work does, and I highly recommend it to anyone who is interested in this subject. I am delighted that you are here. Welcome to the committee.

Mr. ANDERSON. Thank you, Senator.

Senator DODD. Let me just run down these things, if I can. We have worked on the language of certification, and I think we ought to go back and remind you of the legislative history which gave birth to the specific language. We wrestled and fought over each word of the certification language. These were not words that were loosely thrown together. Sometimes in the consideration of these words we forget exactly what we are driving at.

Let me just read it to you very briefly. First, we want to know whether or not El Salvador is making a concerted and significant effort to comply with internationally recognized human rights. With all due respect to my good friend and colleague from Rhode Island, the word "smidgen" is not included in this part of the certification process. It is a significant and concerted effort to comply with human rights.

Second, we want to know wherever El Salvador is achieving substantial control over all elements of its own security forces, and is making continued progress in implementing, among other things, land reform. I think it is important to keep those words in mind, because it was the intent of this committee and Congress that those words be specifically used. In fact, we had a lengthy debate over the words "significant" and "substantial" during the consideration of this language.

My question to all five of you is, can you say, and I will start with you, Bill, over here, that the Government of El Salvador is making a concerted and significant effort to comply with internationally recognized human rights, is there substantial control over the security forces, and do you see continuing progress in land reform?

Mr. DOHERTY. I can see why you thought so long and hard over these adjectives. First of all, I think you have to clarify. In the eyes and views of my colleagues, there are really two governments in El Salvador. There is not the government. There is an elected Constituent Assembly, led by a reactionary majority that would like to set the clock back and immediately grab for power when they took office, instead of trying to evolve a new constitution, as was their task.

Then there is an appointed President with three Vice Presidents representing the current trends, supported, frankly, by the army. So, you have the Magaña army government and you have the D'Aubuisson Constituent Assembly government. It is very difficult to determine

what the actions of a government are when it has this obvious dichotomy. I think to certify with the full meaning of all of those adjectives is a very difficult process, but by the same token, I think the Senator is aware of our views in this matter. We think it would be disastrous at this particular moment.

Senator DODD. The question is a legal question that we have to address here. It is a legal certification. What you have just told me is that you do not believe, even though you think we ought to aid, and I understand your position, but you could not tell me that there is significant progress and concerted efforts in the area of human rights and significant or substantial control of the security forces and continuing progress in land reform.

Mr. DOHERTY. All right. In the area of human rights, and this is the testimony, again, of our colleagues at UPD, they feel that there is a better climate within the last month. They have 280 full-time promoters working for them that go all over El Salvador to promote the land reform program, and to explain its meaning to the peasant membership, and to get them to come in and file applications under the program.

For the months of March, April, and May, they were practically afraid to go into the field because of the threat to their lives. They are now going out to the field again. In the month of July, there have only been some nine evictions, although there were some 10,000 evictions from March through June.

To demonstrate that there has been continued progress is difficult, but to demonstrate that there has been a turnaround within the last month, and I think that is a result of the certification process, is demonstrable. We make this point, that in February of this year, as many as 4,000 campesino families a month were coming in and applying for titles under Decree 207, the Land to the Tiller program. It had decreased in June by our own Embassy figures, by the figures of FIN ATA, and confirmed by our people, to 105.

Now, frankly, the degree of human rights available out in the hinterland determines whether or not the campesino has the courage to come forward and announce himself as a claimant on the land.

Senator DODD. I will have to stop you right here. I will try to come back, but I must leave to vote, and since the chairman is now here, why don't you just suspend on my question, and I will try to come back to it?

The CHAIRMAN [presiding]. Senator Helms.

Senator HELMS. Mr. Chairman, I am regretful that the business on the floor required that I stay there since the vote before last, but let me ask each of the panelists a question that Senator Huddleston raised to me. I think it is an interesting question.

Do you believe that if aid were withdrawn from El Salvador, that the people would be better off or worse off?

Mr. ANDERSON. If you would like me to start on that, I would say that if humanitarian type aid, physical aid to the country were withdrawn, people undoubtedly would be worse off. If military aid were withdrawn from the country of El Salvador, I think we would be sending a message to the military that they had better try negotiations, and from that point of view in my estimation I think it would be better not to send that kind of aid.

Senator HELMS. Dr. Anderson, I read your statement, and please understand me, sir, I am not questioning your sincerity one bit. I want you to know that. But I was impressed with the subjectivity. You changed, for example, in the very first sentence of your statement, reading here, the situation in El Salvador is extremely—no, you said very complex. However, certain facts appear to be clear. And you changed the word "appear" to "are."

Mr. ANDERSON. Do you mean in my oral testimony?

Senator HELMS. Yes, sir.

Mr. ANDERSON. I was trying simply to summarize my document. I was not reading it word for word.

Senator HELMS. Well, there is a great deal of difference between "appear to be clear" and "are clear." Now, you were just flat out declaring that these facts you went into are clear. We had testimony this morning from people in the administration—I do not know whether you were here or not, but I told them to look me in the eye as to whether they were covering up anything in El Salvador. They said no.

I did not hear Mr. James' testimony nor Mr. Halperin's nor Mr. Doherty's, but what you are saying is, implicitly, oh, yes, they are covering up. Now, the common thread that seems to run through so much of the criticism of the efforts by this country to stabilize the situation in El Salvador is that all of the evils are being perpetrated by the Government.

Maybe some of you lamented the fact that thousands upon thousands of people are being slaughtered by these Marxist terrorists, but I have not heard any lamentation in that regard, not from you and not from Mr. Finn, so long as I was here, and I do not know about the other three.

Last week, on the Senate floor, when the resolution relating to certification was up for consideration, I offered the simple proposition that the administration be required to give an assessment and a certification about the control of the slaughter that is being perpetrated by these terrorists. Under the configuration of the unanimous consent agreement, the resolution was not amendable, and I asked unanimous consent that it be amendable, to which there was an objection.

Now, I ask you, and any of the others, what is wrong with being evenhanded about this thing, and saying we do not like—in fact, we deplore—whatever the atrocities or violations of human rights being committed by the army or the government, but at the same time to heck with these Marxist terrorists who are being promoted, financed, and supported through Cuba by the Soviet Union?

Now, why was there nothing in your statement about that?

Mr. ANDERSON. Senator, that is a very complicated set of questions. May I first say that I agree with your assessment that my testimony suggests the possibility that to a certain extent the testimony you heard this morning was perhaps—it would be wrong to say it was trying to make a coverup, but perhaps it was serving certain interests, and perhaps not all that objective, from what I heard, but in regard to your question about the terrorists, let me make one thing clear. I am not a supporter of the guerrilla movement in El Salvador.

There are no good guys in El Salvador. There are only varying shades of bad guys, and with some good mixed in, perhaps, but the

98-270 O - 83 - 11

terrorists, as you call them, the rebels are not our guys. We cannot control their actions. Perhaps Moscow can. I do not know. But the forces over which we have some control, the people over whom we can exercise some restraining influence are the Salvadoran military, the Salvadoran Government, and through the Salvadoran Government perhaps the rightist death squads. We cannot exercise any control over the activities of the guerrillas, no matter how nefarious those activities may be, and therefore my testimony does not address that point.

Senator HELMS. So you do not even mention it.

Mr. ANDERSON. No.

Senator HELMS. Well, that is the question that I am raising. What does that red light mean? Are we on a 5-minute rule?

The CHAIRMAN. I thought we were on a 10-minute rule.

Mr. SANDERS. We are on a 5-minute rule.

The CHAIRMAN. We are? Well, take 5 more minutes, Senator, please.

Senator HELMS. I owe you an apology, sir. I left before you testified, and I am advised that you did address yourself to the leftists, and I did not hear the other three. Does anyone else have any other comment?

Mr. JAMES. I did address myself in some part to that question, Senator, and in a very sharp criticism I made of the American Civil Liberties Union-America's Watch Committee report as utterly biased in favor of the guerrillas. I suggested that they could have been more evenhanded in their treatment of the very delicate issue of human rights violations in El Salvador.

May I point out further that what little information manages to leak out from the guerrilla camp indicates that they very definitely commit violations of human rights, including even those of their own comrades. There is the famous case of a Salvadoran poet who was a Marxist-Leninist, named Roque Dalton, who was murdered in cold blood at the orders of Joaquin Villalobos—whose name I mentioned earlier as the head of the People's Revolutionary Army—because Dalton did not agree with the tactics or strategy being employed by Villalobos and his faction.

There have been several other examples of sheer terror and murder within the guerrilla camp itself. One can logically infer from such information, in the absence of other knowledge, that in all probability the guerrillas do commit atrocities against innocent civilians in the areas under their control.

The Communists traditionally have been known for their internicine warfare. We have none other than the example of Stalin, who murdered off a whole generation of Bolsheviks. Now, that is Bolsheviks that we are talking about. What would happen if the guerrillas came to power in El Salvador? They would murder a lot of people within their own camp who do not agree with them, and obviously they would go gunning for anybody else who might be to the right of them.

So, I certainly agree with you. I think we do have to be more evenhanded, although there is a paucity of information about the guerrillas, and we do have to at least recognize that historically they have proven themselves capable of committing atrocities.

Mr. HALPERIN. Senator, since it has been twice said that the report that I was involved in did not address that issue, I would like, if I could, with your indulgence just to read a few sentences from the report, and it answers your question as well.

The report deals with human rights as the term is generally understood in international law. That is, deprivation of life or liberty by a government without due process of law and not in the course of armed conflict. Our exclusive concern is with the violation of human rights.

Then we go on to say:

Obviously, in any generalized conflict, violence stems from many sources. In the case of El Salvador, there have been many violations of Salvadoran law by armed revolutionaries. They have included summary executions, kidnapings, and the destruction of public and private property.

This report does not question the use of military force to resist such acts, nor the use of legal process in accordance with internationally recognized legal norms to punish violations of domestic law. It is obviously the right of any government to defend itself against violent efforts to overthrow it.

But the issue that we addressed is the legal obligations of the Government of El Salvador to its own people and its own Constitution, and in international legal agreements that it has signed to accord those people due process, even if there is an armed struggle going on. We are not talking about how they deal on the battlefield with the guerrillas. We are talking about what we describe in this report and what the certification talks about, the torture and murder of unarmed civilians by the military forces.

Senator HELMS. Well, even that is subject to analysis, perhaps even debate with respect, really, to what is going on.

Let me ask you a question, Mr. Halperin. The Deputy Minister of Defense, Colonel Castillo, was captured by the guerrillas in disputed territory. Do you know where he is today?

Mr. HALPERIN. There was a press report just a couple of days ago of a radio broadcast of his on the guerrilla radio.

Senator HELMS. So he is still alive. Now, is it not a fact that his captors boasted that the colonel mistook them for regular army officers, since they were disguised as such? Is that not a fact?

Mr. HALPERIN. I do not know that it is, but I do not know that it is not. I have not seen that report.

Senator HELMS. This is part of the report. Now, if the Deputy Minister of Defense could not tell the enemy from his own troops, does that not tell us something about all of this "weight of evidence" that is being shoveled out to the American people, condemning everything that happens in El Salvador and blaming the army, blaming the government, and bringing us back to the question that Senator Huddleston raised on the Senate floor just a minute ago in a private conversation to me: Would the people be better off if we cut off all aid, military and otherwise? I think the answer to that is obvious.

I see the red light is on again.

Mr. HALPERIN. Senator, I think it depends on what we do. If we suspend aid, and impose specific conditions like the repeal of the decree that deprives people who are arrested of due process, the kind of conditions that have been suggested on land reform and indicate that we will resume our aid if these conditions are met, including negotiations, then I do not think there is any question but that the people of El Salvador will be better off, but if we simply walk away from the situation completely, then I think you have a very different question.

Senator HELMS. If the country does not fall to the guerrillas in the meantime. I wish that we had a perfect answer and an unacceptable answer. We could choose. But we cannot even do that in this country.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Helms.

Senator Pressler, unless you are in a hurry, we have our final witness who has just joined us, Prof. Roy Prosterman.

Senator PRESSLER. Mr. Chairman, I do have something to do, and I have been waiting for a while.

The CHAIRMAN. Very well. Since you do, please go right ahead. Then we will have Professor Prosterman follow you.

Senator PRESSLER. I want to pursue Senator Helms' question a little bit. I served in the Army in Vietnam and I saw the takeover in Vietnam by the Communists, and now we are told that human rights conditions are much worse than they were under any of the governments that were there before.

The point I am making is this: We go in cycles here. I am not a pessimist, but we do go in cycles with some of these developing countries.

What makes you think that if the FMLN/FDR took over they would provide a better form of human rights? What evidence, what historical evidence do we have of that? How can you be sure of that?

Mr. DOHERTY. Senator, has anybody on this panel made that assertion? Maybe they did before I came in here.

Senator PRESSLER. Well, maybe not. What I am trying to understand is, what policy are you advocating? What should happen. Let us say we cut off aid entirely. From the point of view, let us say, of whether the human rights situation is going forward or backward, or whether the courts are going forward or backward, what is it that you want to happen here in terms of Government action or in terms of our aid?

I mean, what is going to happen next? What would you like to see happen?

Mr. DOHERTY. Senator, very frankly, if the guerrilla left wins in El Salvador you will have the same situation that you have in Cuba and Nicaragua, and that is now happening in Grenada in this hemisphere and that is now happening behind the Iron Curtain and all over the rest of the world—a complete abrogation of human rights. There would be no right to speak, no right to free press, no right to free trade unions, no right to religion.

There would just not be human rights in our concept of what the Bill of Rights is all about in a Marxist-dominated country, a dictatorship. So the workers and the campesinos of El Salvador, as here represented, are absolutely opposed to any kind of victory on the part of the Marxist-Leninist left.

But by the same token, they do not want to return to the type of oligarchial structure they had prior to the revolution in November 1979, when very few families controlled most of the wealth of that nation and took terrible advantage of the human and social condition of the people who live in that country.

They happen to believe that there is underway in El Salvador a revolutionary process that hopefully will end up in a democratic, pluralistic society. The step of the elections on March 28, was an overwhelming demonstration that 1.500.000 people rejected the Marxist-Leninist left. They hoped that there would be a Presidential election next year, there will be a moderate government elected with the full will of the people, that can proceed down the democratic path.

And that cannot be done if aid is cut off. The opinion of the workers and campesinos as represented by the UPD is that if our aid is cut off this will only favor the extremist forces. You see, the forces of the right in El Salvador and on the left agree on one thing: They want to have a bloodbath, they want to have at each other. And the blood will be the blood of the Salvadoran people if we withdraw and let them have at each other, because very few guerrillas really get killed, very few members of the oligarchy really get killed.

Senator PRESSLER. Well now, what I am trying to determine is, what is your policy? What are you advocating as the next step? Some members of the panel seem to advocate a complete cutoff of U.S. aid. Do I misunderstand that?

Mr. DOHERTY. We and the AFL–CIO and the unions of El Salvador continue to advocate that the aid flows be very carefully conditioned by the Congress to actual progress in the area of human rights, land reform, and electoral reform. We feel that a formula should be devised that can stage our aid payments to that country on the basis of their performance in these areas.

Senator PRESSLER. All right, we would all agree with that. But what is our next step now? Do you recommend at this moment, with this certification, that we continue aid at the present level specifically?

Mr. DOHERTY. Frankly, we feel the Government of El Salvador should be rewarded if indeed it performs well in this area.

Senator PRESSLER. Do you feel that it has?

Mr. DOHERTY. No, I do not.

Senator PRESSLER. Well then, what would be the next step? I am trying to get the policy.

Mr. DOHERTY. I feel that there was an attempt made to destroy the land reform program and that has now been set right, and there ought to be an opportunity now to find out whether or not they are willing to perform as they had originally committed themselves.

Senator PRESSLER. OK. Then what is our next step, to cut aid?

Mr. DOHERTY. No; I think to continue aid.

Senator PRESSLER. To continue aid at the present level, but to continue to inquire, then? Is that what you are advocating?

Mr. DOHERTY. I think to tighten up the certification process or to attach new conditions to the new aid that will come before the Senate and the House in the fall of this year.

Senator PRESSLER. And if those conditions are not met, then we cut off aid?

Mr. DOHERTY. I would continue to consult with the people of El Salvador to try to determine who most benefits from the cut in aid. You see, frankly, I notice that the extremists on both sides want the aid cut. Mr. D'Aubuisson and some of his friends claim that they do not like the conditions the Congress attaches to the aid, that it is interventionist and they can get money from the Arab world, and they do not want your aid. And the left does not want military aid because they do not want to be defeated.

Senator PRESSLER. I agree with everything you are saying. But I just want to get a feel for what our next step should be. And what if we find that they are not meeting our conditions; then would you cut aid? You would not cut aid at this point. You would continue to keep aid going at this present level?

Mr. DOHERTY. If the rights of the people of El Salvador continue to be violated in the way in which they were during the course of the past few years, then I think that gives us a real problem of conscience in this country as to whether we can continue to support that type of process.

Senator PRESSLER. But should not the next step be to continue aid at the same level? You are satisfied that the government is behaving properly to this point, apparently, if you want aid to continue; is that right?

Mr. DOHERTY. I feel that unless aid is continued we will not be able to determine whether or not the government is going to perform well.

Senator PRESSLER. But you said you are not satisfied that the government is performing well. So therefore would it not follow that you would want to cut aid?

Mr. DOHERTY. It is admittedly a very complicated situation, Senator. We believe that the aid has to be out there as an incentive to perform, and that if you cut it that you are benefiting the enemies of democracy.

That the Salvadoran Government has performed well up to this point, I will not certify to that effect. But I will say that in the area of land reform and in the area of human rights and in the area of the investigation of the people who murdered our colleagues that they are now trying to perform. They have not performed to our satisfaction. I cannot say that.

Senator PRESSLER. But then at some point, though, you say that you would cut aid if we were not satisfied. But you are not satisfied now, but you want to continue aid now?

Mr. DOHERTY. I am trying to express the view as presented to us by the campesinos and the workers of El Salvador. They feel that aid must be continued if those people who represent a democratic solution, a pluralistic society, will in the end survive. If aid is cut off, it is going to benefit the enemies of democracy, either the Marxist-Leninists on the left or those on the right that would like to assume power for their own greed.

Senator PRESSLER. Well, I found this conversation this afternoon very interesting, but I have been trying to get specific policy recommendations. People are saying they are not satisfied with the performance of the government, but many say that we should continue aid. Others say that we should withdraw aid, as I understand it, almost entirely, which I think would let the far left take over.

It seems to me that we are very much in need of some very specific policy recommendations. If we are not satisfied with the progress that is being made at this point we should be saying, cut aid, if we are going to tie their performance to aid. But you seem to be saying that, even though you are not satisfied with the performance, you still feel strongly that aid should be continued.

So then the question is, at what point would you cut the aid?

Mr. DOHERTY. That is precisely the point, Senator. It has never been conditioned to performance, and that is why the dilemma. We feel that aid should be conditioned to specific levels of performance in the areas of land reform, human rights, the reestablishment of justice in the country, and the diminution of violence.

We believe that as caretakers of the American pursestring you people in the Senate and in the House have the perfect right to establish under what conditions your aid will be forthcoming.

Senator PRESSLER. Thank you.

Did I see another hand? Does somebody else want to comment on that?

Mr. FINN. I just want to comment. I generally support, again, what Bill Doherty has said. We are not choosing between what is satisfactory and unsatisfactory. We are choosing between what is unsatisfactory and even more unsatisfactory.

So I think it is quite possible to say that we do not find it completely satisfactory, but it is nevertheless an improvement, and because it is an improvement we would support the aid which has brought us to that point, and we would support the aid because it will take us further than we are now. And conversely, if that aid were to be cut off we would have a retrogression rather than progress or a static situation.

So even though it is unsatisfactory, it is an improvement. A degree of improvement is what we have to debate. Our own judgment—and I am speaking for Freedom House—is that it is significant enough that we would support both economic and military aid. But it does not mean that there are not areas there to criticize, the same areas that are under debate here for the accreditation or for the aid.

Senator PRESSLER. So as I understand, two members of the panel, while you have criticism, you support continuing our levels of aid at the present time as a policy matter?

Mr. FINN. I would, speaking for myself and Freedom House.

Senator PRESSLER. That is two.

Mr. James?

Mr. JAMES. Senator, I would like to interject, if I may, another note here, which I tried to do earlier. As a professional writer, born into the English language, I love linguistic precision and try to practice it in my own work. At the same time, having lived in Latin America for many years and covered it as a journalist since 1953, I know that you cannot impose precision upon a people and a language and customs that are simply not used to being precise.

I think this is a very dangerous area that we could be getting into. I have known Bill Doherty for many years and he and I see eye to eye on most things. I would be inclined to agree with him. My instinct tells me that we should set up certain criteria. But then I think of those people down there and I know that they have different criteria, and I would not want to see us banging our heads against theirs and find that we are up a blind alley because they move more indirectly, in their own way.

They have a different approach to everything. The Spanish langauge itself, as you know, is not exactly precise. Senator Dodd is proud of his language here and I am, too. I think it is just great. I wish there were some way of applying this and of making people down there understand what is concerned and what is significant. But to us, it means one thing; to them it may mean something else.

The fact that they have had only the second free election in the whole history of El Salvador, the first one having taken place in 1931, shows you that a long time must pass before you can get near first base.

Senator PRESSLER. I agree with all of that. What do you recommend?

Mr. JAMES. I am in favor of certification. I am not in favor of——

Senator PRESSLER. Are you in favor of continuing our level of aid at the same level that we now have?

Mr. JAMES. Yes, sir.

Mr. HALPERIN. May I give you a vote on the other side, Senator.

Senator PRESSLER. Of course.

Mr. HALPERIN. I think the law gives no choice. If the words of the certification have any meaning at all, they require the termination of aid. The conditions of the certification I think simply have not been met on the evidence of the State Department, let alone the evidence beyond that.

Now, if you want then to talk about what Congress should now do, given that the President has certified, I think what you have to do is to go beyond the general language of the certification, which is not very precise because it does not have specific performance standards in it, and talk about conditioning aid on specific performance standards.

I think maybe when you were out of the room, the land reform experts have been working together and have come up with certain conditions in terms of how many titles would be issued, how many permanent titles could be issued, that could be put in.

Let me suggest, on the human rights area, that at the very least you ought to insist upon one simple thing. And I resent the notion from people who claim to know about the country that we are imposing our standards on them. Let me just refer you and urge you to look at two documents.

One is Decree 507, which is the current law which covers the treatment of people who are arrested for subversion. It provides, among other things, that the examining phase shall be secret and shall not exceed 180 days; and that civilians who are arrested shall be tried in the military courts.

Now, if you look at another document, not the American Constitution, not the laws of this country, but the code of criminal procedure of El Salvador, which was issued pursuant to the El Salvadoran Constitution, it provides that from the moment of his capture an individual shall be informed of the acts imputed to him, shall be authorized to call a lawyer or another person to defend him, but no method of physical or moral coercion shall be used against him.

I would say that the Congress ought to insist that progress in human rights, the Government of El Salvador treating its citizens in the way that human rights requires, would at the very least require that Decree 507 be terminated and that the rights that are contained in the criminal code of El Salvador be applied to the people of El Salvador.

Senator PRESSLER. And cutting off aid would solve that?

Mr. HALPERIN. I would say that if we cut off the aid tomorrow and said that we will resume the aid when the military purges itself of the people who are known to be perpetrators of human rights violations—and Mr. Duarte had an agreement as to who should go, and they are still there—reinstitute the criminal code of the country, meet the land reform standards, and then the aid will be resumed, that those changes will, in fact, take place.

The land reform changes took place when this committee made it clear that the aid was not going to go if the land reform changes did not take place.

The CHAIRMAN. Thank you, Senator Pressler.

Senator Dodd, I believe you had 5 or 6 minutes left before you went down to vote. If it is all right with you, we will ask Dr. Prosterman to give us his testimony. He came in late and has not testified. Unless you have to leave. Are you in a hurry?

Senator DODD. No, not at all.

The CHAIRMAN. Professor Prosterman, your testimony is about 36 pages long, plus an equal number of pages of indexes. Certainly we would want your comments with respect to the accuracy of the certification on land reform. You might possibly want to touch on your final recommendations on what we can do better to insist on the implementation of all phases of this program.

If you can summarize your comments, the full text will be incorporated in the record.

STATEMENT OF ROY L. PROSTERMAN, ESQ., PROFESSOR OF LAW, UNIVERSITY OF WASHINGTON, SEATTLE, WASH.

Mr. PROSTERMAN. Thank you very much, Mr. Chairman. Fortunately, I do have some summary comments, which will take about 5 minutes.

Against the background of the highest proportion of landless families still to be found anywhere in Latin America, in El Salvador, in 1980, in March and April of that year, the Christian Democratic and military junta decreed major land reform efforts. These affected all large estates over 1,235 acres, in phase I—and in phase III affected all land farmed by tenants, whatever the size of the landlord's holding. The average phase III landlord turns out to have about 59 acres, which is quite a large piece of land, by the way, by Salvadoran standards. We often forget that El Salvador has a higher population density than India.

Together these two phases resulted in the expropriation of between 27 and 30 percent of all land contained in farms and between 29 and 33 percent of all land actually used for crops. The beneficiaries were between 35,000 and 50,000 families of agricultural laborers, and between 127,000 and 173,000 families—the ambiguity arising from an uncertainty in one of the census definitions—of former tenant farmers.

The total, roughly 160,000 to 220,000 families, represented about two-thirds of all the landless, half of all agricultural families, and nearly one-quarter of the total population of El Salvador. It was by any objective standard a major land reform, comparable to the massive land reforms, for example, in postwar Japan, Taiwan, or South Korea.

A further phase of the reform, phase II, would have affected medium-sized estates worked with hired labor. It was deferred. Though that phase is significant, it's worth pointing out that those farms contain much less of the coffee land and export crop land than has sometimes been alleged. There have been allegations that "65" or even "88" percent of the coffee land is contained in phase II farms. In fact, they contain between 58,000 and 62,000 hectares out of a nationwide total of 186,000 hectares of coffee, between 31 and 33 percent of all coffee.

The representation for other export crops is also significantly less than sometimes claimed. And when you take into account the "reserve area" which landlords on those lands would have been able to

keep, the total amount of cropland involved in the deferred phase II is about one-quarter of what has been covered in the implemented phases, phase I and phase III.

Another common misunderstanding is that the land reform has resulted in a loss of production. On the contrary, in the best estimates phase I holdings, the big estates, in the first crop year of the reform produced about 100 percent less overall than before the reform, then recovered in the second crop year, the last crop year, to a level 10 to 20 percent above the prereform level.

Those wishing to attack the reform can, of course, selectively produce individual cases among the 326 intervened estates where production fell. But the conclusions I have just cited are based on a sample of over 20 of these farms made by a team led by Dr. Don Paarlberg, of Purdue, one of our country's most distinguished agricultural economists.

It is not possible to separately estimate production for phase III small holdings, the ones that were received by the former tenant families. But for the basic small holding crop, corn, production was slightly above prereform levels the first year, fell slightly to about 7 percent below that level in the second year.

Significant production declines have occurred only on the phase II holdings, where the land reform was not carried out but deferred, and the problem was the deferral—not the reform but the fact that those holdings were left in limbo.

The reform has been attacked on grounds that are partisan and frequently inaccurate, both by supporters of the landlords, who would like to get their land back, and by supporters of the guerrillas, who correctly perceive that the reform would deprive them of campesino support and recruits as the historic grievances of the countryside were dealt with.

The real problems—and they existed—included a delay in the process of receiving applications from the beneficiaries of phase III until spring of 1981, inadequacies of the regulations for that process once adopted, AID's tardiness in providing technical assistance to the program, and a significant spate of illegal evictions due to the delays.

But many of these problems seemed significantly reduced in scope, while others seemed on their way to solution, as of early 1982. The election campaign saw both D'Aubuisson's ARENA party and the traditional rightwing PCN campaign for the land reform, but this pose was quickly dropped under the far-right coalition which those parties formed in the Constituent Assembly.

Both in its administration and at the hands of the assembly, the land reform has suffered severely. Constituent Assembly Decree No. 3 put off phase III, unless it is amended or a new constitution adopted that reverses that decree. But worse, Constituent Assembly Decrees No. 6 and 11, passed in late May, have had the combined effect of severely threatening the entire phase III or "Land to the Tiller" program.

After a strong and courageous effort, the major campesino organizations, the Union Comunal Salvadorena together with the other democratic campesino organizations and unions which form the UPD, have succeeded in obtaining the adoption of Executive Decree 13 of July 27. This resolves one of the central problems created by Decrees 6 and 11, relating to the rights of those who had been evicted before May 18, 1982.

It holds out hope that the titling process can be put back on track—if the executive decree is implemented so as to effectively serve the land reform process on this problem and on other important issues, such as land description and dispute resolution.

But Constituent Assembly Decrees 6 and 11 create a host of additional administrative problems, and severely threaten the confidence of the beneficiaries of the program. This may be seen, for example, in contrasting the rate per month of beneficiaries applying for title. During the last 6 months of 1981, the average was over 2,900 per month, and sometimes over 4,000 per month applied. Provisional titles were issued at about the same rate in the last half of 1981.

During the 3 months following the March 28, 1982, elections, the average dropped to 470 applications a month, less than one-sixth as many, while provisional titling dropped to under half the former rate. In June only 105 applications for title were filed, an outgrowth, I believe, of the fear of eviction if one applies for title, of the appointment of hostile administrators, and of the passage of Decrees 6 and 11. I have just received the monthly July data and only 155 title applications were filed in that month, while provisional titles declined to 269.

More than 10,000 provisional titleholders, roughly one-third of the total, have been evicted since March 28. This does not count all the beneficiaries, three-quarters of whom have not yet applied for title. It is true that evictions have now declined, which is very welcome news, and it is claimed that 2,000 evicted families have been restored.

But even ignoring the problem of re-eviction, which appears to be a significant one, this figure for restorations amounts to only one-fifth of those illegally evicted. It is true that final titles have been issued for the first time, but the number, 103 in June, 148 in July, is still miniscule.

Moreover, on the best information that I have available, I believe there are now serious problems on the phase I estimates, as a result, again, of the appointment of hostile administrators and the apparent widespread dismissal of favorably disposed officials, the failure to provide credit to many cooperatives, and the weakening of important support services.

I believe—and here I do wish to take care to point out that Mr. Doherty, whose testimony refers to mine on the issue of land reform, and AIFLD, have not expressed an opinion directly on the issue of certification. I do so on my own behalf.

I believe that the certification of continued progress in land reform during the past 6 months, as the words "continued progress" are understood in the ordinary meaning of the English language, should not have been made. I am pleased that the certification document and administration testimony are candid about many of the problems. But I believe the certification itself was improper.

In light of all this, what might be done? A simple continuation of aid, business as usual, offers no leverage. Neither does a flat cutoff. What the UPD, the UCS, AIFLD, the executive director of the Land Council, Mary Temple, and I all agree on is that the best course now would be to make future military aid and economic support funds conditional on actual quantitative progress in the application, titling, end-to-evictions and restoring-evictees areas.

This approach, which is detailed in my testimony and its annexes, appears to represent a more satisfactory means of gearing U.S. aid to actual progress than the once-every-6-months approach, which,

however, has been helpful, together with such pending congressional actions as the Dodd-Kassebaum amendment passed by this committee and the McHugh amendment in the House, in the pressure it has applied. This gearing to actual performance would, moreover, go beyond military aid, which is the subject of the certification process.

Such a progress payments approach further avoids the potential problem of 4 or 5 months of disastrous performance, followed by a desperate 1- or 2-month effort to draw back from the chasm just before certification.

The goals adopted by Salvador's own land reform agency at the beginning of 1982, also endorsed by the "leaked" State Department cable of late May, could serve as a reasonable standard for disbursement of military and ESF funds during fiscal year 1983, precisely in proportion to quantitative progress. Those phase III goals were: 50,000 applications to be received; 35,000 provisional and 12,000 final titles to be issued, compensation to be paid commensurate with issuance of final titles.

In addition, as the State Department cable notes, secure tenure must be provided to all beneficiaries, that is, all evictions ended and all illegally evicted persons restored. There are other issues relating to how such a conditioning process might be dealt with which are——

The CHAIRMAN. Professor Prosterman, would you advise me about how much longer you want to go?

Mr. PROSTERMAN. I would say I am in my last 15 seconds, Mr. Chairman.

The CHAIRMAN. Well then, please proceed.

Mr. PROSTERMAN. That such a progress payments approach might best be worked out through either—well, the question as to whether it might be best worked out through congressional agreement with the administration on such an approach and its parameters, followed by administration negotiation with the Salvadoran Government of agreed-on goals and related aid disbursements, or through additional legislative language or congressional report language acceded to by the administration; and there are other related issues.

[Professor Prosterman's prepared statement follows:]

PREPARED STATEMENT OF PROF. ROY L. PROSTERMAN

Since February 1980, I have served as an unpaid consultant to the American Institute for Free Labor Development and to El Salvador's principal campesino (peasant) organization, the Union Comunal Salvadorena, with respect to the land reform issue in that country. Further discussion of my work on this issue, the history of the land reform effort, and comments on current policy questions relating to the land reform will be found in my recent article in the New Republic, which is attached as Annex A to this statement.

El Salvador began the year 1980 with the highest proportion of tenant farmers and agricultural laborers, in relation to total population, still found in any country in Latin America. It was evident that, if this problem were not solved, El Salvador would experience all-out civil war, as had occurred in parallel circumstances in Mexico, Russia, China, Cuba, and Vietnam.

It was likewise evident that, without solving this problem, El Salvador would be unlikely to raise the productivity of basic foodcrops from their prevailing low levels, or to spread the benefits of agricultural change in a way permitting a general, grass-roots process of development to occur. The response, courageously undertaken in the Spring of 1980, was one of Latin America's most sweeping programs of land reform, a program which is now in jeopardy.

I will address the six related questions which I have been asked, in order:

(1) What is the legal and practical status of each phase of the reform?

(I shall provide background in this answer, but will defer many specifics to my answers to the questions which follow.)

The Basic Law of Agrarian Reform, promulgated by the Junta on March 6, 1980, contemplated a three-phase program, affecting, respectively, large estates, medium estates worked with hired labor, and all lands worked by tenant farmers.

Details on the three phases, of which Phase I (large estates) and Phase III (tenanted lands) have been implemented, will be found in Annex B, a chapter on "The Demographics of Land Reform in El Salvador Since 1980" which I was asked to prepare for the current volume of UCLA's Statistical Abstract of Latin America (a publication regarded by scholars as a highly authoritative source of statistical information for the region).

Phase I, taking large estates over 500 hectares (1235 acres), was promulgated on March 6, 1980, the same day as the Basic Law, by Decree 154. It has affected some 326 farms (Secretary Enders' statement to the Committee on Foreign Affairs on July 29, 1982, puts the latest figure at 328) containing about 15 percent of all land in farms and—using the latest, revised data from the December 1981 Paarlberg/Checci report prepared for AID, as reflected in the Statistical Abstract at Table 3705—about 12 percent of all cropland. Cooperatives have been organized on most of these holdings, with the number of beneficiary families variously estimated, as of early 1982, between 35,000 and 50,000 out of the total of between 143,000 and 157,000 families who had, prior to the reform, been wholly or primarily dependent on performing agricultural labor for hire and had not simultaneously farmed any land as tenants (if one includes families who were simultaneously tenants, the total was between 184,000 and 206,000 families: see Statistical Abstract).

The AID estimate was around 35,000 beneficiary families; the rough estimate by AIFLD personnel in consultation with UCS (including beneficiary families on holdings where coops had not yet been organized, and families benefiting through cultivation of individual parcels rather than jointly-cultivated coop lands) was around 50,000 beneficiary families, AID has now reduced its estimate to about 30,000 families,[1] and a proportionate reduction in the previous higher estimate would be to around 43,000 families.

Phase III is the other phase that has been implemented, under Decree 207 of April 28, 1980. Also known as the "land-to-the-tiller" program (the common designation of programs giving land to individual tenant farmers, as in Japan, Taiwan, South Korea, and elsewhere), it enforces the Basic Law's prohibition of the indirect exploitation of land. This decree provided that all land farmed by tenants or sharecroppers be immediately and automatically expropriated for in-place transfer to the individual tenant cultivators, regardless of the total size of the former landlords' holding. A regulation was to be enacted within thirty days to start the much lengthier process leading to the issuance of actual deeds, and to govern the process by which the new owners would gradually repay the government for the land. Individual beneficiaries could claim a maximum of 7 hectares (17 acres). In the rare case in which a tenant farmed more than that—only about one tenant out of 25, although affecting perhaps one-fifth of the cropland that Phase III expropriated—the excess was likewise immediately expropriated, but was to be eventually redistributed to other landless families.

The peasants were told, through constant government radio publicity and by four hundred peasant promoters trained by the UCS, that the land they were on was theirs, that there were no remaining landlord property rights, that they were to stop paying rent, and that the harvest was theirs to sell or eat. The farmer remained on the same piece of land, maintaining the existing units. In all these senses, Decree 207 went about as far in the direction of being "self-implementing" as a legislative enactment by itself could go, though a confirmatory titling process was recognized as important and expected. The lands affected by phase III represented a further 12 to 15 percent of all land in farms and 17 to 21 per-

---

[1] Said to be an adjustment due to farms abandoned; the reason for abandonment is further given, in AID's monthly land-reform report for April 1982, as "civil strife," repeated in Secretary Enders' statement as location "in or near conflict zones." However, some abandonment may well have occurred because of non-supply of credit or inputs to particular coops, or because of threats from local security forces, matters with respect to which the Government of El Salvador would bear responsibility. The extent of such problems as a cause for decline in beneficiary numbers cannot be quantified at present.

cent of all cropland, with all of the 127,000 to 173,000 former tenant families on these lands as beneficiaries.[2]

Phase II was to have affected some 1,700 smaller estates of 100 to 500 hectares (247 to 1235 acres) worked with hired laborers. It was deferred for a year on March 6, 1980, further deferred, and then rendered essentially unimplementable in the absence of a constitutional amendment, by an April 26, 1982, action of the new Constituent Assembly, discussed below. If implemented, phase II would benefit roughly the same number of agricultural-worker families as phase I. Since come critics of the land-reform process on both the right and left have inaccurately characterized the lands that would be affected by phase II—and their misstatements have crept into some of the media discussion—it is important to recognize that phase II would be far less important than the implemented phase I and phase III: about 24 percent of all land in farms, and a lower 14 to 18 percent of all cropland, versus a combined phase I and III total of 27 to 30 percent of all land in farms and a higher 29 to 33 percent (because of the intensive cultivation of the small, formerly-tenanted holdings) of all cropland. Moreover, the phase I total is after allowing for virtually all "reserve area" claims by the former landowners; the net amount of cropland that would be available under phase II after the "reserve area" claims would be around one-half the figure shown—7 to 9 percent of all cropland, or only about one-quarter as much cropland as on the phase I and III holdings.

Phase II lands do contain higher proportions of export-croplands than of overall croplands, but even here, the figures are far lower than have sometimes been represented.

Specifically, at the time of El Salvador's 1971 Agricultural Census, the Phase II holdings—the gross area of all holdings of 100 to 500 hectares (247 to 1235 acres), not even taking into account the reduction for "reserve area"—included 22,895 hectares (on 100–200 hectare holdings) plus 21,899 hectares (on 200–500 hectare holdings) out of the total area of 147,039 hectares of coffee planted on all holdings: 44,794 divided by 147,039 equals 30 percent of all coffee as the percentage grown on Phase II holdings; the estimated figure for the crop year before the 1980 reform is between 58,000 and 62,000 hectares out of 186,000 total hectares of coffee (see *Statistical Abstract*, Table 3705, with update for latest USDA estimate), or between 31 and 33 percent of all coffee.[3] The relevant portion of the United Nations Food and Agriculture Organization publication of the results of the 1971 Salvadoran agricultural census is attached as Annex C (with the relevant figures for coffee, as well as cotton and sugarcane, underlined), so that the reader may see for himself or herself that the sometimes-voiced claims that "65 percent" or "88 percent" of all coffee is grown on Phase II holdings are inaccurate; so inaccurate as to be truly irresponsible. The 1971 figure was around 30 percent, the current figure is around 31–33 percent.

Likewise Phase II holdings in 1971 grew about 25,656 hectares out of 64,187 hectares of cotton, or 39 percent; the pre-reform figure (Table 3705) is somewhere between 30 and 41 percent. For sugarcane, the 1971 figure was 4,615 out of 23,251 hectares or 20 percent; while this pre-reform figure is about 21 percent.

The net area of coffee, cotton, and sugarcane, after "reserve area" claims, that would have been affected by an implemented Phase II is thus around 16 percent of total planted area, 15–20 percent, and 10 percent, for the three crops, respectively.

There are very serious problems with the land reform, discussed below, but while Phase II is significant and should be implemented, its implementation or lack of implementation is by no means the crucial issue, as some in the past have claimed; it is vital to recognize the actual situation if the real problems are to be identified and confronted.

In summary, the two implemented phases, Phase I and Phase III, expropriated 27 to 30 percent of all land in farms and 29 to 33 percent of all cropland, and

---

[2] See "Statistical Abstract," table 3704. The range is due to uncertainties as to how to allocate holdings in a category described as "Other Forms of Tenure" in El Salvador's 1961 and 1971 agricultural censuses, whose results are then projected for the 1980 population to obtain these estimates. The numbers 127,000 to 173,000 represent families on holdings all or most of which they rented. An additional 15,000 families were on holdings that were partly but not predominantly made up of rented land. Thus the total number of families receiving some phase III benefits is actually in the range of 142,000 to 188,000.

[3] As the update indicates, if *all* additions other than those known to be on Phase I lands were on Phase II lands, there would be a theoretical possibility of as much as 40 percent of all coffee now being grown on Phase II lands; but this would require the extremely unlikely assumption of no acreage additions of coffee on holdings under 100 hectares (under 247 acres), which have always grown, and continue to grow, the majority of El Salvador's coffee.

"in their prime" benefited somewhere between (35,000+127,000) and (50,000+173,000), or 162,000 to 223,000 families, around two-thirds of all the landless, about half of all agricultural families, and nearly one-quarter of the total population of El Salvador.

By any objective standard, it was a major land reform. Its initial accomplishments, both in political and agricultural terms, were highly satisfactory, as I have detailed in the New Republic article attached as Annex A. It should be emphasized that production on the Phase I and Phase III holdings did not decline to any significant degree on all credible, technical or expert evidence, as distinct from the partisan assertions of those supporting the ex-landlords or the guerrillas, including easily-offered selective accounts of specific holdings among the 326 affected by Phase I where production declined. Overall, in the agricultural year 1981–82, ending in early 1982, production apparently was up 10–20 percent from pre-reform levels on Phase I holdings, and down (while no separate data is available for Phase III as distinct from other small holdings) 7–8 percent for the grain crops which are the quintessential product for the Phase III and other small holdings. Production declines appear to have been concentrated heavily on the Phase II holdings, where the problem was not implementation of the land reform, but non-implementation, with those holdings in a sort of limbo, lacking either motivated new (beneficiary) owners or secure old (traditional) owners.

There were significant implementation problems, almost ignored in the partisan attacks made on the reform: For example, the process of receiving applications and giving provisional titles for Phase III was delayed to Spring 1981; the regulations finally adopted required the beneficiary to come to the administrators rather than reaching out to the villages (cantons) as in most successful land-to-the-tiller programs; AID was very tardy in providing technical assistance; and the delays in the titling process kindled the hopes of some ex-landlords that they could reverse the program, triggering a significant number of illegal evictions. But many of the problems seemed substantially reduced in scope, while others seemed on their way to solution as of early 1982. Additional comments appear in the attached New Republic article.

Then came the consequences of the March 28 elections, almost certainly unforeseen and unintended by the mass of the voters. Although D'Aubuisson's ARENA party and the traditional right-wing PCN party had both campaigned for land reform (D'Aubuisson made a point of asking peasant audiences, "Have you received your title yet?"), this pose was quickly dropped after the balloting. Both in its administration and at the hands of the ARENA–PCN coalition in the Constituent Assembly, the land reform has suffered severely. Indeed, in relation to what the voters were led to expect, what has happened is a betrayal—even a virtual coup d'etat.

The legal status of the reforms has been affected by three new Decrees and, also, by an administrative action just taken which lays the groundwork for ameliorating some of the effects of those Decrees.

Constituent Assembly Decree No. 3 of April 26, 1982, repeals, though with prospective effect only, Junta Decree No. 114, which had allowed for expropriation of land without the limitations of the 1962 Constitution. This does not retrospectively affect Junta Decrees 154 and 207 which had implemented Phase I and Phase III in 1980, but makes it virtually impossible to implement Phase II in the future, unless or until Decree 3 is amended or a new Constitution adopted—this is because the 1962 Constitution, which would apply to any attempt to expropriate land for Phase II under new legislation, would make it doubtful that agrarian reform is a purpose for which land can be taken, and also would require complex proceedings, probably including full payment, before any land could be actually expropriated, even for a permitted purpose.

However, as pointed out above, Phase II, while significant, is by no means the sine qua non of a successful land reform in El Salvador.

More worrisome are Constituent Assembly Decree No. 6 of May 18, 1982, and the "interpretive" Assembly Decree No. 11 of May 27.

The translated text of the two decrees follows:

DECREE NO. 6—THE CONSTITUENT ASSEMBLY OF THE REPUBLIC OF EL SALVADOR

Whereas:

I. There is an urgent necessity to increment the areas of agricultural land for the production of cotton, sugar cane, cereals and livestock;

II. A substantial portion of these crops has traditionally been carried out in leased lands, for which the provisions of Decree No. 207 issued by the Govern-

ment Revolutionary Junta on April 28th, 1980, published in the Official Record of the same date, have limited the possibilities of such a system of production;

III. It is advisable to obtain the confidence of the landlords in order that the purposes contemplated under Item I above be accomplished; it must be clearly established that the lands leased for future agricultural production will not be affected.

Therefore, making use of the Legislative prerogatives granted to the Assembly by the Constituent Decree No. 3 of April 26, 1982 published in Official Record No. 75, Vol. 275 of the same date, and upon initiative by the President of the Republic through the Minister of Agriculture and Livestock, pursuant to the opinion issued by the Vice-Presidents of the Republic and in conformity with Constituent Decree No. 9 of 6 of this month,

Hereby decrees:

Article 1—Lease arrangements for land areas, to be used for the production of cotton, sugar cane, cereals and livestock, beginning this year and for the duration of their respective tillage cycles, will not be subject to the system set forth by Decree No. 207 issued by the Government Revolutionary Junta on April 28, 1980, published in the Official Record No. 78, Vol. 267 of the same date. All rights originated from these lease arrangements must be respected.

Article 2—At the time the present Decree becomes effective the rights acquired by the beneficiaries of Decree No. 207 will be recognized accordingly, and the implementation thereof will be the subject of the pertinent regulation.

Article 3—The present Decree will become effective the date it is published in the Official Record.

DECREE NO. 11—THE CONSTITUENT ASSEMBLY OF THE REPUBLIC OF EL SALVADOR

Considering:

I. That on the eighteenth of May of this year this Constituent Assembly emitted Decree No. 6 by means of which it was established that rental contracts of lands dedicated to the cultivation of cotton, sugar cane, grains and livestock activities would not be subject to the provisions established in Decree No. 207 of this Revolutionary Governing Junta of April 28, 1980 during the respective crop cycle, the derived rights of such rental agreements being respected;

II. That in the same mannner it was established that upon the effective date of Decree No. 6 the acquired rights of the beneficiaries of Decree No. 207 will be recognized and the application of the same will be codified in the corresponding regulation;

III. That to the end of avoiding confusion or incorrect interpretations and also to maintain compliance with that enacted in Decree No. 207 and to fully guarantee the enjoyment of the rights obtained by its beneficiaries, it is useful to clarify once and for all what are understood as acquired rights.

Therefore, in exercise of the legislative faculties conferred upon it by Constituent Decree No. 3 of April 26 of this year published in the Official Journal No. 75, Volume 275, of the same date and at the initiative of the President of the Republic through the Minister of Agriculture and Livestock.

Decrees:

Article 1—That Decree No. 6 of the eighteenth of this month published in the Official Journal No. 94, Volume 275, of the twenty-fourth of this same month is to be authentically interpreted in the sense that, and for the effects of which, acquired rights will be understood as those of those persons who on the date of its effectiveness:

(A) Had already received their property titles from FINATA;

(B) Had presented their applications for title to property before FINATA but had not yet received a resolution favorable to the extension of said title; and;

(C) Who for some reason have not yet presented their application for title to property before FINATA but who on the date of the decree which is the object of this interpretation were enjoying the tenure of the land to which they seek title.

Article 2—This present Decree will be understood as incorporated into the text of Decree No. 6 of the eighteenth of this current month;

Article 3—This present decree will become effective on the date of its publication in the Official Journal.

These decrees have consistently been characterized by Salvadoran government officials as "suspending" Decree 207. Various views have been put forth as to what this in fact entails. There are several possibilities for such interpretation, none of them encouraging.

First, by its terms, Decree 6 does not expressly limit itself to "uncultivated" land or to land that has no Decree 207 beneficiary family claiming it: theoretically, it might be claimed, "owners" could rent any lands out, and Decree 11 would merely clarify the right of the "beneficiary," despite the dentling of his possessory or economic claims for one crop cycle, to proceed with the formalities of his claim, under which he would resume possessory and economic rights after the present crop cycle. However, the fact that Decree 207 expropriated all land which was rented out from its then-owners as of the effective date of the Decree (which was May 6, 1980) and made them, in law, ex-owners as of that data, makes it conceptually very difficult to argue that Decree 6 could give such persons any renewed right to rent out such land—it would seem that title to the land (which, of course, is distinct from the deed, piece of paper, or land-records entry providing evidence of title—all of which were superseded in legal effect as of May 6, 1980, as to such land) would first have to be re-vested in them. This is not done by Decree 6. Also, the purpose statement of Decree 6 strongly suggests that it is aimed at uncultivated land.

Thus, the generally-suggested legal interpretation appears to be that Decree 6 "only" applies to idle land that has no Decree 207 beneficiary already on it.

Unfortunately, this still raises a host of problems:

(i) Decree 11 interprets Artice 2 of Decree 6, protecting persons who had "rights acquired" under Decree 207 (properly in light of what Decree 207 did to give immediate rights to all beneficiaries), to include not only rights of those who had received titles or made applications, but also rights of those who, for whatever reason, had not yet presented their application; but it continues (Article 1C)) with the qualification that they have been "enjoying the tenure [tenencial] of the land" as of the date of Decree 6—i.e., May 18, 1982. The question immediately arose, what of persons illegally evicted between May 6, 1980, and May 18, 1982? Was that eviction now "legalized?" Thousands of families would thereby lose their rights, and ex-owners—becoming once again owners, it would seem, by implication—would benefit by their wrong. It was thought likely by some that "tenecia" required not just right, but actual possession—if so, this would be a grave problem. After a strong and courageous effort, the UCS, and the other democratic campesino organizations and unions which form the Union Popular Democrática (UPD), have succeeded in obtaining the adoption of Executive Decree No. 13 of July 27, 1982, which clearly appears to resolve this problem in favor of the campesinos—affirming the continuing right of all original beneficiaries, including those illegally evicted before May 18, 1982, to claim their formal title. There of course remains the question of implementation of this Decree so as to effectively serve the land-reform process, on this as well as on other important issues (such as land-description and dispute resolution).

(ii) But other problems remain, involving not the strict "legal" ambit of Decrees 6 and 11, but the severe administrative problems they threaten to create. First, even if a beneficiary is on the land during the main crop season, what if, during the off-season, an ex-landlord purports to put on a new "tenant" grazing one or two head of cattle, and then claims this was "idle" land that he was entitled to rent out, on which there was, and is, no "beneficiary" of Decree 207? On the facts given, the ex-landlord should not prevail—but the point is, Decrees 6 and 11 give him a new mechanism (a "Decree 6" rental agreement) with which to try to assert "rights" to the land. If the beneficiary were assured of capable representation, and the judicial system were functioning, the ex-landlord would lose in such a blatant attempt to cheat: But these assumptions are not correct, and the ex-landlords know it. We will not know the full potential for this kind of mischief under Decrees 6 and 11 until after the harvest, but by then it may be too late. (Solution? "Grain" and "livestock" land should be amended out of Decrees 6 and 11 right now.)

(iii) Also, even though it does not seem legally sustainable, some ex-landlords may either believe, or pretend to believe, that Decrees 6 and 11 permit renewed renting out of all their (former) land, idle or not, occupied by beneficiaries or not. They are clearly given a new incentive for illegal eviction, since they can now attempt to replace the evictee with what they will claim is a "Decree 6" tenant, and indeed later try to use their "rental contract"—even if confronted by a clear reading of Decree 6 as applying only to idle land, and by a total inversion of reasoning—to "prove" that the land had been idle or "Decree 6" land. Again, it creates a new and potentially powerful mechanism for cheating. There are truly nightmarish administrative possibilities here, with two parallel systems of "renting"—one being a new system for "idle" lands under Decree 6 and perfectly legal,

98-270 O - 83 - 12

the other, under the legally-terminated old system, having given rise to beneficiary rights under Decree 207. Ex-landlords have strong incentive to illegally try to "bring" land under the former and remove it from the latter—and it will put great pressure on the administrative system to keep them from doing so.

(iv) Further, there is the fact that the passage of Decrees 6 and 11, and accompanying publicity, caused many beneficiaries to lose heart, and to believe that a general "suspension" of Decree 207 was, indeed, what had been enacted. This damage to their confidence in the reality of the program and the reality of their rights under Decree 207 (which came not just from Decrees 6 and 11, but from a combination of other factors which I shall also discuss), while difficult to measure, appears to have been severe, and may prove difficult to repair. One hopes that Executive Decree No. 13 of July 27 will lay the groundwork for such restoration of confidence.

Finally, and to complete my answer to question (1), it may be said that the legal status of Phase I has not changed—but its practical status has, I believe, changed adversely, as a result of the appointment of hostile administrators, and the apparently widespread dismissal of favorably-disposed officials, non-granting of credit to many coops and weakening of important support services.

(2) What evidence is there that there has been continued progress, and what trends exist in terms of the number of applications received, the number of provisional titles granted, and the number of permanent titles granted?

The New Republic article contains some discussion of this.

It may be useful to recast the data—using the same AID monthly reports—in terms of the time periods shown in the table of Secretary Enders' statement, except using just the 6 months from June 1981 to December 28, 1981 in the first column, in comparison with the 6 months from December 29, 1981 to June 28, 1982 in the second column, and with a further breakdown of the second column figures into the three pre-election months (December 29, 1981 to March 28, 1982) and the three post-election months (March 29, 1982 to June 28, 1982) :

PHASE III PERFORMANCE

	June 12, 1981 to Dec. 28, 1981 [1]	Dec. 29, 1981 to June 28, 1982	Dec. 29, 1981 to March 28, 1982	March 29, 1982 to June 28, 1982
Number of heads of family filing title petitions [2]	15,234	4,197	2,958	1,239
Total persons in families filing title petitions	91,404	25,182	17,748	7,434
Land area affected (acres)	57,439	19,391	13,811	5,580
Title petitions filed	[3] 19,331	4,710	3,300	1,410
Provisional titles issued (higher provisional title figures related to pre-June 12, 1981, backlog of title petitons filed)	20,790	10,598	6,373	4,225
Definitive titles issued	0	103	0	103
Property owners compensated	0	8	0	8
Amount of compensation paid	0	$494,686	0	$494,686

[1] AID's 1st reporting period covered June 12, 1981 to July 24, 1981, instead of beginning at June 28, so the figures are for a period of approximately 6 mo. and 2 weeks.

[2] This is a more exact characterization, I believe, than the designation "Number of Direct Beneficiaries," which is used in Secretary Enders' table; the next entry, for "Total Persons" in these families ("Total Beneficiaries" in Secretary Enders' table) results from multiplying by 6 for average family size: for purposes of rounding this is acceptable, although 5.6 per family (see "Statistical Abstract" attachment, taole 3703) is probably a more precise estimate.

[3] Prior to June 12, 1981, AID did not prepare monthly reports, but 12,815 title petitions were filed from approximately Mar. 1 to June 12, 1981; to June 28, 1982, the cumulative totals are 36,856 title petitions, 31,440 provisional titles, and 29,362 heads of family filing title petitions.

The results, I believe, are quite striking. Performance in every area except the issuance of definitive titles and the payment of compensation was significantly better in the 6 months preceding the January 28, 1982 certification of continued progress than in the 6 months preceding the July 28 certification of continued progress; and with the same exceptions, performance was significantly better in the first three months than in the final three (post-election) months of the just-completed certification period.[4] The exceptions, moreover, relate to an extremely-small-scale start on the definitive-titling and ex-landlord-compensation processes.

[4] The final month, as Secretary Enders' chart suggests, actually is allocated to the following "certification period," since the data for that month does not come in on time to be used in the certificate document.

For title applications (or "petitions") filed, and provisional titles issued, the rates per month, based on the table, are as follows:

	June 12, 1981 to Dec. 28, 1981 [1]	Dec. 29, 1981 to June 28, 1982	Dec. 29, 1981 to March 28, 1982	March 29, 1982 to June 28, 1982
Title applications	2,974	785	1,100	470
Provisional titles	3,198	1,766	2,124	1,408

[1] Rate per month here is obtained by dividing by 6.5, rather than 6.

Of greatest significance, I believe, is the fact that—with at least 75 percent of all beneficiaries not yet entered into (I would prefer to say, "reached by", but it would not be an accurate characterization) the application process—applications, the new people "entering the system," have virtually dried up since March 28, running at less than one-sixth the rate of the June–December period of 1981. This is a sign, I believe, of the beneficiaries' declining faith in the reality of the program: an outgrowth of the fact that a high proportion of applicants (and provisional-title recipients) get illegally evicted, creating a powerful deterrent against exercising their rights to apply; of the appointment of hostile administrators and attendant public statements by various parties; and of the passage of Decrees 6 and 11.[5]

(3) What is the situation regarding evictions, and what trends exist on the number of evictions which have occurred?

Evictions are harder to estimate. I believe that a rough figure would be perhaps 5,000 during 1981, with another 2,000 during 1982 up to the March 28 elections; since the elections, evictions have skyrocketed. At the end of May, just two months after the elections, the UCS estimated 9,600 new evictions among provisional title-holders alone, and was able quickly to come up with a name-and-place list of 3,604 such evicted titleholders just among its own members. The remainder were in a largely-nonoverlapping list of 3,412, reported directly to the land-reform agency (FINATA), and a further, largely-nonoverlapping 3,000 to 4,000 reported directly to the army. An even larger number of beneficiaries have probably been evicted among the 75 to 80 percent who have not yet received provisional titles.

In the past two months, there have been claims of as many as 2,000 restorations of evicted families by the army, which (as distinct from the local security forces) has generally supported the reform. But, on some reports, half of those restored may have been evicted again. Shirley Christian of The Miami Herald reports being taken to one large holding to see the restoration of eight evicted beneficiaries by the army. By asking a few questions, she learned that another ninety-nine evicted families were not being restored. She returned on her own the next day, and found that all eight "restored" families had been thrown out by the Policia Nacional. On another occasion, she reports, a scheduled restoration of several evicted families was halted when the patron turned out to be a high official close to D'Aubuisson and the far right. In any event, the number of restorations clearly lags far behind the number evicted since March 28, 1982.

Preliminary information is that the number of evictions has declined during June and July; however, it appears that initial restorations have also lagged in recent weeks, since Secretary Enders' July 29 statement uses what I take to be an up-to-date restoration figure of "1,995" (page 7, line 3), differing only by around 200 from the figure used by the State Department in the first few days of July.

(4) How do you interpret the legislative actions regarding the land reform which have been taken since the March 28th election?

This point is covered above, in the latter part of my answer to question (1).

(5) What are your views as to whether or not the Presidential certification accurately reflects the situation with respect to land reform?

Here I should take care to point out that Mr. Doherty (whole testimony refers to mine for coverage of the issue of land reform) and AIFLD have not expressed an opinion directly on the issue of certification and that, in so far as I do so in response to this question, I do this on my own behalf.

---

[5] I am anxious to see the June 28-July 28 report, since there were further declines in these and other categories for the month May 28-June 28: in particular, applications-filed trailed off to a mere 105, around four a day.

My view is that certification of "continued progress" in land reform, as those words are understood in the ordinary meaning of the English language, should not have been made. Further comments relevant to this point—from the viewpoint of the options before the certification was made—will be found in my New Republic article.

This does not, however, give any clear clue as to how, or whether, things might be set right, an issue which I address below in response to the final question.

With respect to the certification, it must be added that the Administration has been reasonably candid about many of the problems—especially if one takes Secretary Enders' statement and testimony in conjunction with the certification document itself. But even taking them all together, there are still points on which I believe the Congress might be inadequately informed or even misled, apart from issues which I have already discussed in some detail (for example, the failure to clearly state that there is a major problem of reeviction of "restored" evictees—a problem described above):

(i) Secretary Enders' testimony before the full Committee on July 29 suggested that Phase I "continues to function normally," and "has not been challenged by the new government," but "has continued." According to my information, this is accurate only as to the law itself, but not with respect to the practice. It is possible that my information on this point is not a true reflection of the situation, but to begin to test whether this is so, I would urge the Subcommittee to request the Administration to provide: (a) information as to the amount of new production and operating credit (and total new credit) made available to Phase I farms so far in 1982 versus the amounts that had been made available as of the same time in 1981; (b) information as to the number of Phase I farms which have received such credit so far in 1982 versus the number as of the same time in 1981; (c) information as to the number of managers, tecnicos or administrators of the Phase I implementing agency (ISTA), whether operating at the single-coop or multi-coop or area-wide level, who have been replaced, fired or reassigned since March 28, and as to the number of Phase I farms which have hired or been supplied with new managers, tecnicos or administrators (whether by ISTA, or hired from the "private sector") since that date.

(ii) Secretary Enders' testimony at one point refers to Phase III as intended originally to be "self-implementing" and "self-financing." The former was true in the sense (see New Republic, "The peasants were told. . . .") that beneficiaries received legal rights immediately, and in-place (with respect to the land they cultivated), but a confirmatory titling process was always recognized as important and expected; moreover, a key issue in making that confirmatory titling process as easily implementable as possible has always been the desirability of getting the administration of that process, and especially of the beneficiary-identification, application-receiving, dispute-settlement and land-description elements of that process (either through canton-level committees, dominated by the beneficiaries, to deal with initial administrative matters, or through utilizing the good offices of the campesino organizations, or through setting up mobile teams) out to the beneficiaries in the cantons.

The new "regulations" adopted (or about to be adopted) still do not, unfortunately, encourage this in any clear way—although it continues to be legally possible to do this under the regulations—and I shall commit in my oral testimony as to whether (my present understanding) the regulations satisfactorily modify a recently-proposed pair of provisions on land-description and dispute-resolution which would have made the application-and-titling process substantially more difficult. Moreover, I have never heard the term "self-financing" applied to Phase III: beneficiary payments were always contemplated as to major source of financing for government payments on the long-term bonds to be issued to ex-landlords, but the cash or "up front" portion of such government payments were always contemplated as requiring some initial financing (for which reason, as Secretary Enders also noted, the $20 million in the Caribbean Basin Initiative that would generate local currency for land-payment purposes is highly desirable).

(iii) Secretary Enders also spoke of the need for additional U.S. support—one area in which this has always been critical, and largely lacking (except for a 6-week period in February-March 1982 when a high level AID technical-assistance team went to El Salvador) has been the area of consistent, high-level U.S. technical support.

(iv) Secretary Enders' testimony carried the implication that the ex-landlord of Phase III holdings were relatively small: "their average holding is 24 hectares, that is to say, only about three times the maximum that one of their tenants can

claim." Twenty-four hectares (59 acres) is, of course, modest by U.S. standards, but definitely not by the standards of El Salvador, which has a greater population density than India, and a median size for all operational farm holdings of around 1 hectare, or 2½ acres (see Statistical Abstract attachment. Table 3700). The average beneficiary of Phase III, thus far, has claimed 4.06 acres (1.65 hectares),[6] so that the "average" 24-hectare ex-landlord had between 14 and 15 tenants on his land—the beneficiary/landlord ratio (the ratio of families benefited to families negatively affected) is therefore around 14:1, not the 3:1 which some might get the quick impression (though this is, to be sure, not what he says[7]) was the import of Secretary Enders' testimony. The size of average-landlord holdings and the beneficiary/landlord ratio for El Salvador are, in fact, both substantially higher than they were in the highly-successful land-to-the-tiller programs of Japan, Taiwan, and South Korea; that is, both of these broad measures are even more conducive to a politically and agriculturally successful land-to-the-tiller program in El Salvador.

(v) Secretary Enders (echoing statements that Ambassador Hinton has made) unfortunately testified that the prohibition of land rental was "A self-destructive provision in a country whose economy was already devastated by sabotage," echoing an erroneous argument made by the Salvadoran far right. Even for cotton and sugarcane land—the original subject of the draft Decree 6 before the Constituent Assembly added "grain" and "livestock" land—there is no credible evidence that I am aware of that suggests that inability to rent was the cause of lost production or idling of land; on the contrary, it was the over-hanging threat of the unimplemented Phase II which resulted in those two crops not being planted by the owners of the 100 to 500 hectare estates—the best solution would have been to implement Phase II (in which case there would have been no more reason to expect a production decline on Phase II lands than on Phase I lands—where the 1981–82 crop year production, according to the Paarlberg/Checci report, was 10–20 percent above pre-reform levels). These lands were ordinarily cultivated as large units with hired labor, not rented to campesino smallholders; and if any "correction" were needed, it was amply found (by the inequitable route of non-implementation, rather than the equitable one of implementation) in the April 26, 1982 Decree No. 3, which ended all prospect for implementing Phase II; even the original draft of Decree No. 6—covering only cotton and caneland—was not needed for the "problem" it purported to address. The addition of "grain" and "livestock" and, assuming only idle lands were meant, undermines the entire administrative foundation of Decree 207 and campesino confidence in the reality of the land-to-the-tiller program (as discussed under question (1) above), thus severely impeding the effort to assure secure tenure and the motivation of ownership to families occupying a substantial share of the country's foodcrop land—which, as all agricultural experience around the world teaches, is the only way to get per-acre production up to reasonable levels on that land, since tenant farmers, in El Salvador as elsewhere, regularly produce at very low levels—for the offsetting "advantage" of possibly bringing some small quantity of genuinely idle foodcrop land (not "idle" because of the previous illegal eviction of a beneficiary) into production.

(vi) Finally, Secretary Enders in his testimony stated that one of the factors on which "the future" of Phase III depended was the "security situation," suggesting with a chart that low levels of application-receipt and provisional titling were somehow linked to guerrilla activity. There is no plausible basis for this assumption: that guerrillas have not attacked the application or titling process (even in South Vietnam, where many areas of land-reform administration—when the program finally got underway in 1970—were far less "secure", titling went forward strongly, and the communists did not physically attack the process, even though they virulently disliked it and attacked it in propaganda, because they knew that physical attacks would draw peasant wrath).

There are very few areas of El Salvador where the "security situation", at least in the sense used by Secretary Enders, appears to represent an impediment to Phase III.

The real problem with respect to "security" vis-a-vis the violent and anti-democratic left, is that, if the great bulk of the 127,000 to 173,000 beneficiary families lose their faith in the reality of Phase III and in the government's

---

[6] 29,362 beneficiaries have filed for 119,420 acres: the average beneficiary files 1.25 applications for title, since roughly one out of five farmed two separate tracts as a tenant, for which he must file two separate application forms.

[7] Only about one tenant out of twenty-five farmed the "maximum" or above.

willingness to protect their rights, many of them—out of desperation—will turn to the guerrillas as their only alternative.

(6) What recommendations do you have as to how the United States can better assist in the implementation of all phases of the land-reform program?

Greatly improved, high-level (i.e., with one or two people able to deal knowledgeably with policy-makers on land reform administration issues, especially with the specialized knowledge relevant to Phase III) technical assistance from AID is essential: I have virtually lost hope that there is any way of achieving this short of a direct Congressional mandate to the Administration.

The final approval of the $20 million of CBI funding that would assist with land compensation is also highly desirable.

Apart from the two foregoing, I see the main hope for resumption of genuine "progress" in the reform as being the typing of the bulk of future aid to actual achievements, or operational performance goals. The attached Annex D represents a statement on this matter which is mutually acceptable to the Unidad Popular Democratica (UPD), the organization of democratic campesino groups and labor unions of which UCS is a member, to AIFLD, to Mary Temple, executive director of the Land Council, and to myself It appears to represent, as to the land reform issue, a more satisfactory means of responding to actual "progress" than the once-every-six-months' approach (which, moreover, only applies as such to military aid); and further avoids the potential problem of 4 or 5 months of disastrous performance followed by a desperate 1–2 month effort to draw back from the chasm before certification.

There would remain further questions as to whether such a "progress payments" approach might best be worked out through Congressional agreement with the Administration on such an approach and its parameters. followed by Administration negotiation with the Salvadoran government of agreed-on goals and related aid disbursement, or through additional legislative language, or Congressional report language acceded to by the Administration, or some combination of the foregoing; as to whether the goals might better be "monthly" or be "annualized" for fiscal year 1983, beginning October 1 of this year; and as to whether, for sake of easier administrability, a more limited number of goals would be used (for example, with provision for disbursements proportionate to progress towards the crucial, minimum goal of (*a*) 50,000 applications to be received during fiscal year 1983—originally the goal set by FINATA, the Phase III administering agency for calendar year 1982—and (*b*) effective restoration of 12,000 evicted families (around 1,000/month), with "(a)" over-all to govern the disbursement of perhaps twice the funds governed by "(b)"; plus provision for (*c*) a simple suspension of disbursements at any time that significant new evictions accumulated, and until effective restoration of those evictees).

There would also be the question of what funds such a "progress payments" approach should apply to: my suggestion would be that it might be applied to both the $80 million in Salvador CBI funds (ESF for general budgetary support) that does not directly relate to land-reform support, and to the $100 million in military and ESF funds at stake under the "Dodd-Kassebaum" amendment adopted by the Senate Foreign Relations Committee (moreover, it might be appropriate in September to have what amounted to an "interim review" of actual progress between now and then, to see if the $100 million should in fact be restored). It might even be applied to the full $105 million of proposed fiscal year 1983 ESF—not just to the $65 million of that amount at issue under Dodd-Kassebaum. It seems particularly appropriate to link ESF to such performance, since these general-budgetary-support and like funds go to aid, in large part, precisely those groups whose allies in the Salvadoran government have the power to either save or wholly destroy the land reform.

The foregoing would provide a total of $180 million—or $200 million, if all fiscal year 1983 "ESF" funds were included—which could be drawn down only if, and as, there was actual, "bottom line" progress in the land reform—it seems to me that this would satisfy essentially all of those interests which revolve around finding a middle ground. It would, of course, provide a powerful practical incentive—perhaps the only hope—for encouraging El Salvador's government to actually get the critical processes of the land reform moving again.

(Other "certification" considerations could, of course, continue to apply to all military aid, as at present, and continue to be dealt with on a twice-yearly basis for such time as U.S. support continued.)

ANNEX A

THE NEW REPUBLIC
A Weekly Journal of Opinion
FOUNDED 1914 | ISSUE 3,525
WASHINGTON, D.C. | AUGUST 9, 1982

Is it too late to help El Salvador save itself?

THE UNMAKING OF A LAND REFORM

BY ROY L. PROSTERMAN*

ON JULY 28 Ronald Reagan will make one of the most fateful decisions of his Presidency. He must decide whether or not to certify to Congress that El Salvador is making "continued progress" in implementing land reform. If he does not, all military aid to El Salvador must be immediately suspended—and the forty to fifty U.S. military advisers withdrawn—until a certification can be made. But if the President does certify "continued progress," he may forfeit the last, slender chance of a future for El Salvador that is not dictated in the short run by the violent right—and in the long run by the violent left.

Unhappily, the fact is that under the far-right coalition that gained control of El Salvador's Constituent Assembly in the wake of the March 28 elections, there has been extensive regression, not "continued progress," in the land reform program. A simple certification of "continued progress" on land reform, therefore, would be improper. Worse, it would sharply increase the chances of an executive-congressional confrontation and a cutoff of aid that would be both general—economic as well as military—and irreversible. A series of graduated actions, rather than either simple certification or total cutoff, offers the best hope for both peace and reform. There are forces in El Salvador which might still be rallied to save the process and assure the peasants land and dignity.

When the dictatorship of Carlos Humberto Romero was ousted in 1979, El Salvador had the worst land-tenure problem in Latin America. A third of the country's total population—more than two-thirds of its agricultural population—consisted of families that made their living on land that was not their own. The landless were divided almost equally between roughly 150,000 families of agricultural laborers who worked for a daily wage and a further 150,000 tenant families who paid yearly rent for a piece of land.

---

* Roy L. Prosterman, a professor of law at the University of Washington, has worked on agricultural policy in eighteen countries, including El Salvador.

In its high proportion of landless, El Salvador resembled a whole series of twentieth-century societies that had been convulsed by revolutions in which the insurgent rank and file had been recruited chiefly from among such tenant and agricultural-laborer families. This had been true in the Mexican, Russian, Chinese, Cuban, and Vietnamese revolutions, as well as in upheavals in Bolivia, Ethiopia, and elsewhere. (In South Vietnam, a land reform was finally carried out in the early 1970s—years too late—that gave ownership to almost a million tenant families. Vietcong recruitment in the South declined from seven thousand to one thousand men a month, although land reform could do nothing about the divisions by then coming down from the North. Ironically, the reform is still in place, since the Communists have been unwilling to risk the agricultural and political repercussions of forced collectivization in the South.)

Add a century-old land grab from the traditional Salvadoran smallholders; the bloody repression of a 1932 uprising that tried to get the land back, in which between seven thousand and thirty thousand people were killed in a few weeks, out of a population a third as large as today's; an election stolen from a center-left coalition led by José Napoleón Duarte and the Christian Democrats in 1972; an unkept promise of land reform under the Molina government in 1975; a steadily growing revolutionary left, committing assassinations and kidnappings and organizing increasingly large public demonstrations; and, finally, a tremendous pressure of population on land, with more people per square mile than in India. It was clear on October 15, 1979, when the first mixed civilian-military junta replaced the ousted Romero regime, that land reform was essential and time was short.

Although that junta counted Guillermo Manuel Ungo (now head of the FDR, the umbrella organization of the left) among its members, and even gave the agrarian-reform agency to the Communists, the revolutionary left was unwilling to allow it a period of grace. Assassinations, bombings, and demonstrations continued. On October 30, just two weeks after the junta took power, Alan Riding reported in *The New York Times*: "The latest wave of political violence to convulse El Salvador appears to reflect a decision by extreme leftist groups to undermine the authority of the country's new Government before it can gain popular support."

When the first junta fell apart, the Christian Democrats agreed to join a second one, but only on the condition that the promised reforms, especially land reform, be quickly decreed. A massive demonstration called by the left for January 22, 1980, brought one hundred thousand people into the streets of San Salvador, mostly landless peasants trucked in from the countryside. Most observers expected the junta to fail. Duarte, interviewed shortly before he entered the government, said it was "going to be very difficult" to prevent a massive civil war that would kill hundreds of thousands of people.

EL SALVADOR'S major peasant organization is the one-hundred-thousand member Unión Comunal Salvadoreña. The UCS, which is committed to change by nonviolent, democratic means and steadfastly opposes the violent left, agreed to support the last-ditch effort to achieve reform. In a virtually unprecedented step, the peasants were given a direct voice. The head of the UCS—José Rodolfo Viera, an exceptional peasant leader with a fourth-grade formal education—became head of the land reform agency, too. I got involved soon after, when Viera asked Michael Hammer of the American Institute for Free Labor Development (AIFLD), an AFL-CIO affiliate that had been providing the UCS with technical assistance since its inception, to give him technical advice on the draft land-reform law he had been handed by the junta. Hammer asked me to provide the advice. With Hammer and a colleague, Mary Temple, I made eight trips to El Salvador between February and October of 1980, working with the UCS and Viera and with government officials to whom they sent us, including the junta and its individual members. In late spring Mark Pearlman, a former student of mine at the University of Washington Law School who had worked on rural poverty problems, joined the AIFLD staff in El Salvador as a legal consultant.

On January 3, 1981, José Rodolfo Viera, Michael Hammer, and Mark Pearlman were murdered by the far right in the coffee shop of the San Salvador Sheraton. Since that day I have not returned to El Salvador, but I have kept in touch with the UCS and AIFLD through regular meetings in the U.S. My role, though affording me a close-up view of the reform process, has been that of technical adviser to the UCS; the reform is very much a Salvadoran product, which has its roots in a draft law prepared at the University of San Salvador in 1971.

It was clearly desirable that land reform should come through nonrevolutionary means. A civil war with a toll proportionate to that of 1932 could mean up to one hundred thousand deaths. If the extreme right won, it would mean brutality and no reform. If the extreme left won, it would mean political repression not significantly less than that under previous dictatorships, and a "land reform" that would almost certainly impose collectivization upon the unwilling peasants. The reforms finally promulgated on March 6 and April 28, 1980, represented an historic effort—like the great postwar land reforms of Japan, Taiwan, and South Korea—to provide an alternative.

On March 6, 1980, the new junta decreed the Basic Law of Agrarian Reform, establishing a three-phase program. It also issued an implementing decree for Phase I which provided for expropriation, with payment chiefly in bonds, of all estates over 500 hectares, or 1,235 acres. Largely completed by July 1980, this process has taken 326 big estates, containing 12 percent of all cropland. By the end of 1981 Phase I had benefited some fifty thousand families. Organized into cooperatives, they comprised about one-third of all who had made their living as hired agricultural workers. At the same time, Phase II, which would have affected 1,700 medium-sized estates of 247 to 1,235 acres that were worked with hired laborers, was deferred (on the dubious rationale that this would maintain production).

But on April 28 the junta promulgated Decree 207 to implement the most important part of the land reform program—Phase III, the land-to-the-tiller program. Decree 207 enforces the Basic Law's prohibition of the indirect exploitation of land. This decree provided that all land farmed by tenants or sharecroppers be immediately and automatically expropriated for in-place transfer to the individual tenant cultivators, regardless of the total size of the former landlords' holding. A regulation was to be enacted within thirty days to start the much lengthier process leading to the issuance of actual deeds, and to govern the process by which the new owners would gradually repay the government for the land. Individual beneficiaries could claim a maximum of seventeen acres (only about one tenant out of twenty-five farmed more than that).

THE PEASANTS were told, through constant government radio publicity and by four hundred peasant promoters trained by the UCS, that the land they were on was theirs, that there were no remaining landlord property rights, that they were to stop paying rent, and that the harvest was theirs to sell or eat. The farmer remained on the same piece of land, maintaining the existing units. In all these senses, Decree 207 went about as far in the direction of being "self-implementing" as a legislative enactment by itself could go, though a confirmatory titling process was recognized as important and expected. The lands affected by Phase III represented a further 17 to 21 percent of all cropland, with all of the roughly 150,000 former tenant families on these lands as beneficiaries.

Phases I and III together took between 29 and 33 percent of cropland. The unimplemented Phase II was far less significant; it affected barely half as much cropland, half of which, in turn, the owners would have been allowed to retain anyway. The two implemented phases benefited some two hundred thousand families. This was about two-thirds of El Salvador's landless people, about half of all agricultural families, and nearly one-quarter of the total population. By any objective standard, it was a major land reform.

The reform was almost instantly successful in a political sense, and the agricultural results—contrary to a great deal of cant, mostly from the far right but some from the left—were highly satisfactory. The far left had brought a hundred thousand into the streets of San Salvador in January 1980; it could muster fewer than two thousand on May Day. Three unsuccessful "general strikes" in the summer were followed by a similarly unsuccessful "final offensive" in January 1981. As Alan Riding noted in the *Times* on February 8, 1981, the far left had "apparently miscalculated the impact on the peasants of land reforms decreed by the junta in March. There was no popular uprising."

The right argued that the land reform was disastrous for agricultural production. In fact, although production on the Phase I estates (according to estimates made by a team led by a distinguished agricultural economist, Don Paarlberg of Purdue University) was down about 10 percent from pre-reform levels in the 1980-1981 agricultural year, it recovered to at least 10 percent *above* pre-reform levels in 1981-1982. There are no separate figures for ex-tenanted small holdings, but the U.S. Department of Agriculture estimates that production of the basic small-holder crop—corn—was actually up marginally from pre-reform levels in 1980-1981, then fell to around 7 percent below the pre-reform level in 1981-1982—a year, however, in which there were significant efforts to erode beneficiary rights.

THE REAL PRODUCTIVITY problems arose on the Phase II estates. Though these had only 15 to 20 percent of total cropland, much less than the two implemented phases of the reform, they included 30 to 40 percent of both cotton and coffee land, and about 20 percent of sugarcane land—not the lion's share of export-crop land (not the 65 percent or 88 percent of coffeeland some have alleged), but enough to make a strong negative impact on overall farm production. This was the fault not of implementing land reform, but of failing to implement it: the Phase II lands were in limbo, with neither new owners motivated enough nor old owners secure enough to farm them.

One index of the reform's general success was the increasingly strident verbal assault on it, both from the old landlords and the far right and from those who sympathized with the guerrillas. The real problems were virtually ignored in these partisan attacks. One of those problems was a long delay in the regulations for issuing formal titles, a delay fostered partly by a belief that the Reagan victory would mean the end of the program, partly by bureaucratic infighting, partly by the elite's resistance to cooperation with Viera and other "pushy peasants," and partly by the U.S. Agency for International Development's failure to move quickly in providing technical assistance. When regulations finally appeared in March 1981, the process was in many ways inadequate. The delays in titling encouraged resistance from ex-landlords, who carried out a spate of illegal evictions with sometimes murderous help from allies in the local security forces. Compensation to ex-owners was also slow.

THE BUREAUCRATIC logjam in El Salvador began to break up only when it became clear that both the new Administration (as confirmed in President Reagan's March 6, 1981, press conference) and the new Congress supported the land reform. As insurance, House and Senate committees approved an amendment requiring certification of continued progress on land reform and on ending human rights abuses as a condition of continued military aid.

By the period between March and November 1981, ex-tenant applications for title were being received at a rate of around 3,500 per month, and close to 2,000 a month were being processed into provisional titles. Evictions slowed, and at the same time compensation to the former owners of the big Phase I estates began to move rapidly. The new land-reform agency administering Phase III prepared 1982 goals under which 50,000 applications would be received, 35,000 provisional titles issued, and 12,000 final titles distributed.

As 1982 began, cooperation by the government with the peasant organizations was finally improving. There seemed to be increasing acceptance of the reality of the land reforms in various sectors of Salvadoran society that had been equivocal or hostile, and AID was at last ready to send its first major technical-assistance team—still not on permanent assignment, but at least for a stay of six weeks. The remaining problems seemed soluble.

Then came the consequences of the March 28 elections, almost certainly unforeseen and unintended by the mass of the voters. Although D'Aubuisson's ARENA party and the traditional right-wing PCN party had both campaigned for land reform (D'Aubuisson made a point of asking peasant audiences, "Have you received your title yet?"), this pose was quickly dropped after the balloting. Both in its administration and at the hands of the ARENA-PCN coalition in the Constituent Assembly, the land reform has suffered severely. Indeed, in relation to what the voters were led to expect, what has happened is a betrayal—even a virtual coup d'état.

An Assembly Decree of April 26, 1982, made any future implementation of Phase II essentially impossible without a constitutional amendment, by removing the legal basis for any new land expropriation measures. Phase I co-ops found themselves (after appointments of hostile officials to key posts in the Ministry of Agriculture) under intense pressure to accept new "managers." The latter have commonly indicated that credit will be contingent on support for the far right—thus threatening to restore the political dominance of the *patróns* and their hangers-on. Half of all co-ops remain without credit, though the planting season is nearly over. Technical support and other services to the co-ops have been virtually dismantled.

The following numbers are one, but only one, reflection of what has happened to Phase III, land-to-the-tiller. They relate to four periods, showing totals and estimated rates per month:

	Applications Taken	Provisional Titles Distributed	Final Titles Distributed
March 1, 1981 to November 31, 1981	30,873 (3,430)	16,144 (1,794)	0
December 1, 1981 to March, 28, 1982	4,573 (1,143)	11,071 (2,768)	0
March 29, 1982 to May 28, 1982	1,305 (653)	3,000 (1,500)	0
May 29, 1982 to June 28, 1982	105 (105)	1,225 (1,225)	103 (103)

(Parentheses show rates per month)

Evictions are harder to estimate. A rough figure would be perhaps 5,000 during 1981, with another 2,000 during 1982 up to the March 28 elections; since the elections, evictions have skyrocketed. At the end of May, just two months after the elections, the UCS estimated 9,600 new evictions among provisional title-holders alone, and was able quickly to come up with a name-and-place list of 3,604 such evicted titleholders just among its own members. The land reform agency has a largely nonoverlapping list of 3,412, based mostly on reports from unaffiliated peasants. An even larger number of beneficiaries have probably been evicted among the 75 to 80 percent who have not yet received provisional titles.

In the past month, there have been claims of as many as 1,800 "restorations" of evicted families by the army, which (as distinct from the local security forces) has generally supported the reform. But it appears there have been an even greater number of new evictions, and that at least half of those restored have been evicted again. Shirley Christian of *The Miami Herald* reports being taken to one large holding to see the restoration of eight evicted beneficiaries by the army. By asking a few questions, she learned that another ninety-nine evicted families were not being restored. She returned on her own the next day, and found that all eight "restored" families had been thrown out by the Policia Naciónal. On another occasion, she reports, a scheduled restoration of several evicted families was halted when the *patrón* turned out to be a high official close to D'Aubuisson and the far right. Such incidents, it appears, are all too typical.

PROGRESS IN TAKING applications slowed during the election campaign, partly because more administrative energy was put into getting out provisional titles. But since March 28 applications have virtually halted, and the provisional titling that is going on relates almost entirely to the pre-election backlog. Provisional title-holders have received 103 final titles, but at least one hundred times that number have been illegally evicted. "Restorations" of evicted families still run far behind evictions and are of dubious effectiveness.

The fact that peasants have stopped applying for land is the most obvious sign of their declining faith in the reality of the program. Applications have been discouraged by the overhanging threat of eviction, the appointment of hostile administrators, and the adoption in late May by the Constituent Assembly of two decrees which the Salvadoran government describes as "temporarily suspending the effect" of Decree 207. President Alvaro Magaña's original draft permitted the renting out only of cotton and sugarcane lands; in the Assembly, ARENA and PCN added "grain" and "cattle" lands—i.e., almost everything. There are still technical arguments over exactly what the suspension entails, but even on the most sanguine reading the new decrees create enormous administrative barriers to achieving any given level of titling or beneficiary protection. (A pending draft of administrative regulations might conceivably reduce the damage, but still needs to be significantly improved, promulgated, and then implemented.) Six months ago, two hundred thousand families could view themselves as genuine beneficiaries of the reform process. That number has, at least for the moment, shrunk to less than fifty thousand.

For all these reasons, a simple July 28 certification of "continued progress" on land reform would be insupportable. But there are clearly forces within El Salvador that could rally to save the reform, assuring the peasants a secure livelihood and a stake in their society, and averting the renewed prospect of all-out civil war. Christopher Dickey reported on July 7 in *The Washington Post* on the prevalent support for the reform among officers in the army, together with the general unpopularity of D'Aubuisson among his ex-colleagues: "The agrarian reform is seen by these officers not only as a key to more U.S. aid and needed political support among the peasants but as a declaration of independence from the old landed oligarchy." Magaña is considered close to the army, and is likely to respond to any signals from pro-reform officers; there are enough Christian Democratic deputies, moreover, to sustain a Magaña veto of any further attacks by the Constituent Assembly.

THE SALVADORANS can, of course, do anything they want to their reform. By the same token, the United States can do anything it wants to its military and economic aid; the United States is not obligated to support a regime skidding toward self-destruction. Certification alone would offer no leverage for improved performance; indeed, the antireform forces might be encouraged to complete their work. Moreover, such certification could well trigger a confrontation with Congress that would lead to a complete cutoff of aid to El Salvador, with little hope of restoration. That, too, would offer little leverage.

Assuming that the goal is to restore the reform—rather than to foreclose all hope of nonviolent redress of peasant grievances and thereby to catalyze a civil war that could well kill another hundred thousand people—what can be done?

Noncertification would suspend military aid as of July 28. Final approval of an amendment proposed by Christopher Dodd and Nancy Kassebaum (adopted 12 to 0 by the Senate Foreign Relations Committee on May 26) would leave military and economic support for the fiscal year starting October 1 at a combined level of $66 million rather than the requested $166 million. Another provision of that amendment would suspend all aid after October 1 if El Salvador was found to have modified or suspended any provision of the Phase I or Phase III program to the detriment of the beneficiaries or potential beneficiaries. A similar provision, added by the House Foreign Affairs Committee on July 15, now puts nearly identical conditions on the $100 million in economic support funds which the Administration proposes to obligate to El Salvador before October 1 under its Caribbean Basin Initiative.

There are numerous possible permutations and combinations of graduated action. Here is one possible line of executive-congressional cooperation:

First, the Administration would indicate on July 28 that it could not yet certify "continued progress," thus suspending new military aid as of that date. Even a suspension of very short duration might shock the Salvadoran authorities into acting quickly to turn the situation around.

Second, Congress, for its part, would wait until after Labor Day to act on the Dodd-Kassebaum Amendment, continuing the $100-million aid cut if certification were still impossible, but otherwise restoring it.

Third, even if the full $166 million were thus appropriated, a series of conditions would be laid down by Congress (possibly in the form of Committee report language acceded to by the executive) for actual disbursement of the restored $100 million during the next fiscal year. Those conditions would require that land reform was progressing at rates sufficient to reach the goals initially envisioned by Salvador's land-reform agency for 1982—that is, 50,000 applications to be received and 35,000 provisional and 12,000 final titles issued. The conditions should also require that evictions be ended and restoration be proceeding effectively.

Fourth, similar conditions could be laid down for the $80 million in Salvador funds in the Caribbean Basin Initiative that do not help finance the land reform itself. The $80 million could be obligated now, but not disbursed except in accordance with the conditions.

ANOTHER ALTERNATIVE might be for the Administration to work out with the congressional leadership some form of "conditional" certification, clearly avowing the facts but asking Congress to withhold insistence on the immediate noncertification those facts would otherwise warrant. In return, the Administration would reach agreement with the Salvadorans to meet the goals described above, with aid disbursements to be proportionate to actual achievement. Depending on the timing of such an agreement and interim progress under it, Congress could act on Dodd-Kassebaum either to continue or to restore the aid cuts. (It would complement all such graduated actions by the U.S. if other donors, such as Venezuela and the Inter-American Development Bank, were to similarly condition their aid, rather than simply continuing or flatly terminating it.)

Again, for the President to certify "continued progress" in the absence of such arrangements would be improper and unwise. No matter what Mr. Reagan does, however, Congress could still take the measured steps I have outlined. Only a mature political exercise along these or similar lines—certainly not an unwarranted "certification," followed by an historic executive-legislative clash—holds out the hope that El Salvador's government can be persuaded to draw back from the brink.

98-270 O - 83 - 13

ANNEX B

CHAPTER 37

THE DEMOGRAPHICS OF LAND REFORM IN EL SALVADOR SINCE 1980

by

Roy L. Prosterman

James W. Wilkie and Stephen Haber, eds., *Statistical Abstract of Latin America*, Volume 22 (Los Angeles: UCLA Latin American Center Publications, University of California, 1982).

Land reform in El Salvador was clearly a national need of very high priority when the "First Junta" overthrew the dictatorship of General Carlos Humberto Romero on October 15, 1979. That military-civilian Junta was succeeded in January 1980 by a "Second Junta" which retained the same military members but replaced the former civilian members with a new civilian group within which the Christian Democratic Party predominated. Several weeks later, the Second Junta promulgated decrees setting forth a land reform which was to consist of three stages, or "phases."

On March 6, 1980, the Basic Law of Land Reform was promulgated.[1] The Basic Law outlined the principles that would govern all three phases. On the same date, the decree specifying initial measures for implementing Phase I, which affected all holdings of 500 hectares (1,235 acres) or more, was promulgated.[2] These holdings were to be distributed to campesino cooperatives and other groups or aggregations of campesinos formed from permanent or temporary agricultural laborers and from other campesinos lacking land ownership, as well as from other campesinos with too little land to support their families.[3] The eventual number of beneficiaries on each Phase I property is to be determined in accordance with the area and soil quality of the land taken.[4] By the fall of 1980, the Phase I expropriation process had extended to some 263 estates, and by the end of 1981, to some 326 estates, containing approximately 223,000 hectares.[5]

AUTHOR'S NOTE: The author has worked closely with the largest campesino organization in El Salvador, the *Unión Comunal Salvadoreña*, and with the AFL-CIO-affiliated American Institute for Free Labor Development, providing technical advice to them relating to the development and implementation of the land reform since February 1980. For a detailed account of economic and political dimensions of the reform process, see, for example, Roy L. Prosterman, Jeffrey M. Riedinger, and Mary N. Temple, "Land Reform and the El Salvador Crisis," *International Security* 6:1 (1981), 53-74.

[1] Decree No. 153 of March 6, 1980. All enactments are published in the *Diario Oficial* (San Salvador) of the same date. All major enactments relating to land reform from October 15, 1979, to the end of 1980 are found in *Boletín de Legislación* No. 51, *Legislación Aplicable al Proceso de Reforma Agraria*, published in June 1981 by the Publications Section of the Banco Hipotecario of El Salvador. English translations of some of the legislation are available from the Department of State, Washington, D.C.

[2] Decree No. 154 of March 6, 1980. Landowners under Phase I were also permitted to retain a "reserve area" of between 100 and 150 hectares of the holding, depending on soil quality. Decree No. 153, Art. 4.

[3] Decree No. 153, Art. 21.

[4] Ibid., Art. 19.

[5] See Don Paarlberg, Peter M. Cody, and Ronald J. Ivey, *Agrarian Reform in El Salvador*, report presented to the Agency for International Development by Checci and Company, Washington, D.C., December 1981, p. 79. The area figure is after allowance of most "reserve area" claims; the remaining claims may eventually reduce this figure by several thousand hectares, but not significantly.

Also on March 6, 1980, the Junta announced a one-year postponement of Phase II, which would have expropriated holdings of 100 up to 500 hectares (247 to 1,235 acres) that had been worked with agricultural laborers.[6] Phase II was subsequently postponed indefinitely.

On April 28, 1980, the "Land-to-the-Tillers" Law, implementing Phase III, was promulgated.[7] The law decreed the immediate expropriation of all tenanted, sharecropped, and similarly indirectly farmed holdings, by operation of law, for transfer to those (tenants, sharecroppers, and others) who actually cultivated them.[8] In accordance with the principles laid down in the Basic Law, this aspect of the reform affected all holdings indirectly farmed, regardless of the total size of the landlord's landholdings—there was no "reserve area" or, as such matters are sometimes put, there was a "zero retention limit."[9] Since *all* those who had held land as tenants, or under any similar status, were beneficiaries of the "Land-to-the-Tillers" phase of land reform, without any further qualifying fact to be determined (such as how large a landlord's total holding had been, or was claimed to have been), it was possible to emphasize to the beneficiaries the immediate nature of their rights:[10]

> The new law having entered in force, all the campesinos who have been working as sharecroppers or tenants, now are owners of the land they cultivate. In consequence, friend campesino, _____ you are owner of the land you have been renting, and no one, absolutely no one, can dispute your right of possession, and no one can evict you. From now on, the harvest is yours.

[6] The authority for taking such lands was to be found in Decree No. 153, Art. 4. Such holders would also each be permitted a "reserve area" of 100 to 150 hectares (proportionately more significant in these mid-size estates than for the large Phase I holdings).

[7] Decree No. 207, April 28, 1980.

[8] Ibid., Arts. 1, 2.

[9] Ibid., Art. 1; Decree No. 153, Art. 1, para. (a), Art. 4. This principle finds its initial expression in Article 5, paragraph (c) of the draft land reform law prepared by Ivo P. Alvarenga at the University of San Salvador in 1971, originally published in *Trabajos* No. 2, Editorial Universitaria San Salvador, 1971, and subsequently included in *Temas Derecho Agrario y Reforma Agraria* (EDUCA, Ciudad Universitaria, Costa Rica, 1977).

The only exception in Decree 207 was, as indicated in Art. 2, rented parcels cultivated by a single tenant as one integral unit which exceeded 100 hectares in size up to 500 hectares in size, which would await Phase II (if the parcel was 500 hectares or more, the owner was already subject to Phase I expropriation). Rented parcels up to 100 hectares that were operated as one integral unit were expropriated, but a single tenant could not claim more than a maximum of 7 hectares, under Art. 3.

[10] From text broadcast on the government radio program, "Nuestra Tierra," May 1980.

> This Decree—as we have already explained to you on various occasions—terminates the traditional and exploitative system of sharecropping and tenancy in El Salvador, and confers ownership of the land upon the campesino who cultivates it. This is to say that if you have been working rented land, now this land is yours and is, moreover, the heritable property of your children.

Despite the emphatic and straightforward nature, from a legal point of view, of the enactments implementing Phase I and Phase III, several problems arose in attempting to carry through this land reform process at a time of growing turmoil in El Salvador, and under circumstances where both extremes within the country strongly objected to that process. (The far right objected because of the threat it posed to the landlords' traditional powers and privileges; the far left because of the threat it posed to their efforts to gain support among the peasantry.) There were often serious difficulties in recruiting and retaining administrative personnel; some key personnel were threatened or even murdered, as in the January 3, 1981, assassination (by persons associated with the extreme right) of José Rodolfo Viera, the peasant leader who had become head of the government land reform agency in January 1980, together with Michael Hammer and Mark Pearlman, American land reform advisors working for the AFL-CIO–affiliated American Institute for Free Labor Development. The regulations under which confirmatory titles were to be provided to the Land-to-the-Tillers beneficiaries were to have been issued by June 1980, but were delayed until December 22, 1980.[11] The first provisional titles were not issued until February 1981; and by December 31, 1981, still only about 22,000 provisional titles, and no final titles, had been issued.[12] Encouraged by the atmosphere of lawlessness and by the slow pace of the titling process, efforts by some former landlords to illegally evict beneficiaries from their lands became an extremely serious problem.[13] (In February 1982 the first two instances of restoration of groups of campesinos who had been evicted occurred: 97 families were restored to their individual parcels on Hacienda Mercedes and approximately 25 families were restored at Fuerte San Nicolás.)[14]

---

[11] Ministry of Agriculture Decree No. 71, Dec. 22, 1980. This is also found in the sources cited in note 1, above.

[12] See "Statement of William C. Doherty, Jr., Executive Director, American Institute for Free Labor Development," to the Subcommittee on Inter-American Affairs of the Committee on Foreign Affairs, U.S. House of Representatives, on the Situation in El Salvador, Feb. 25, 1982. See also Paarlberg, Cody, and Ivey, *Agrarian Reform in El Salvador*, p. 107.

[13] Doherty, "Statement."

[14] Personal communication to the author from the Salvadoran country program director for the American Institute for Free Labor Development, Feb. 25, 1982.

The first final title to a Phase I cooperative was not issued until August 1981, and only four had been issued (out of 326 possible) by February 1982.[15] (No provisional titling process was introduced for these holdings.) The Basic Law was vague as to when such titles would be issued, appearing to make it turn on some demonstration of capacity by the beneficiaries.[16]

Discussion of the land reform by both its friends and enemies throughout 1981 and early 1982 involved such questions as the significance of particular lands distributed or families benefited figures in relation to the potential universe of farmland or agricultural families in the country; the absolute numbers of farm laborer, tenant farmer, or other categories of agricultural families at the outset of the reform process; and the significance of the reform in relation to particular crops, such as coffee. It will serve this discussion to have available, in so far as they can be developed, data and estimates that bear upon these questions.

By far the most extensive source of data is the Third National Agricultural Census, carried out in 1971.[17] Table 3700 includes the number, size, and tenure characteristics of agricultural holdings and the number of paid workers (as distinct from owners or tenants) having a permanent relationship to the holdings.

Table 3701 shows the status of "mixed" holdings, those that were tenanted only in part.

Table 3702 presents data, calculated from the Agricultural Census, on the incomes of campesino families with small holdings of three different size categories in four subregions of the country.

Table 3703 shows general data on the characteristics of the population of El Salvador found in the Fourth National Census of Population,[18] also carried out in 1971.

---

[15] Ibid.

[16] Decree No. 153, Art. 18.

[17] See Ministerio de Economía, Dirección General de Estadística y Censos, *Tercer Censo Nacional Agropecuario 1971*, vol. II (San Salvador, January 1975), henceforth cited as 1971 Agricultural Census. Nearly all of the data presently significant are also summarized in FAO, *Report on the 1970 World Census of Agriculture*, Census Bull. No. 25, Feb. 1979, pp. 1-36. The Census was taken between August 23 and the end of September.

[18] Ministerio de Economía, Dirección General de Estadística y Censos, *Cuarto Censo Nacional de Población 1971*, vols. I and II (San Salvador, Dec. 1974 and Jan. 1977), henceforth cited as 1971 Population Census. The Population Census was begun on June 28, 1971, and was carried out during the following 5 days in the urban areas and following 15 days in rural areas.

The published Population Census data do not directly indicate the number of families corresponding to the figure for "population economically active in agriculture." It can be inferred that approximately 351,000 families would be required to supply that number of persons economically active in agriculture (625,000), if the average family contributed 1.78 such persons. (The variance from that number for all occupations for all urban and all rural families, respectively, is only plus or minus .04 economically active persons per family.) In accordance with the same calculation, about 49,000 families would be required to supply the 87,000 paid permanent agricultural workers described in table 3700.

A few comments may then be made about what tables 3700 to 3703 appear to indicate about the El Salvador of 1971. Less than a quarter of the families that made their living from agriculture appear to have been wholly dependent on performing agricultural labor for hire and not to have been associated with an individual agricultural holding either as operating (or managing) owner or operating (or managing) renter. This can be calculated as 80,132 families, the difference between 351,000, the estimated total number of families making their living from agriculture, and 270,868, the total number of separately operated holdings, which can also be taken as a close approximation of the number of such families operationally associated with an individual holding (table 3700), either as owner or tenant. Of these 80,132 families wholly dependent on performing agricultural labor for hire, the majority, about 49,000, performed work as permanent laborers on particular estates or holdings. The remainder (31,132) reflects the approximate number of families wholly dependent on the performance of labor for hire on a migrant, part-time basis on a series of estates or holdings (a category sometimes loosely referred to in the current debate as the "wholly landless," or as "wholly landless laborers").

Table 3702 indicates that families holding .5 hectares or more gained the majority of their income from that farm holding itself, and that families holding less than .5 hectares earned the greater part of their income from labor performed off the holding. Thus, the additional 61,257 families shown in table 3700 to have been associated with holdings of less than .5 hectares appear to have been primarily, though not wholly, dependent on performing agricultural labor for hire.[19] Altogether, then, about two-fifths of the agricultural households, calculated here as 141,389 (80,132 plus 61,257), appear to have made their living either wholly or primarily from performing agricultural labor for hire rather than from a specific family holding with which they were associated either as owner or tenant.

For those 270,868 households that were associated with any specific holding (including holdings of less than .5 hectares), table 3700 shows that roughly half had holdings that were wholly or predominantly rented:

There were 76,256 holdings wholly rented, and a further 4,408 rented with promise of sale.

There were 17,018 held under *colonia*, usually involving a related work relationship on a central holding owned by the same landlord, who either provided the colonia parcel in return for services performed on the central holding, or in consideration of those services and a separate rental paid by the *colón*.

As table 3701 shows, of the "mixed" holdings, those partly owned and partly rented up to 2 hectares in size consisted predominantly of rented land, altogether 22,502 holdings (another 13,836 of 2 hectares and more were predominantly owned).[20] Another 7,831 "mixed" holdings that were partly free and partly rented consisted predominantly of rented land in all size categories.

A final category of holdings, called "other forms of tenure," is used by the Agricultural Census to include holdings "rented with promise of sale, free, free and rented, in succession, and other forms not denominated."[21] Thus, this category in part adds to the rented-with-promise-of-sale and mixed free-and-rented categories which are separately enumerated, and in part contains holdings with no rented land. Without further information, it is impossible to assign any specified number of these 20,996 holdings to the total of holdings wholly or predominantly rented; one can only state that the additional number is somewhere between 0 and 20,996.

---

[19] This is, of course, an approximation, even for 1971, not only because of the possible shortcomings of the data and of projections derived from the data, but because some of those families which gained only a minority of their livelihood from farming an individual holding may have been among those which gained a majority of their livelihood from entirely nonagricultural pursuits.

[20] Seven more holdings, of 500 hectares and above, were predominantly rented.

[21] 1971 Agricultural Census, II, p. xxii.

Table 3700

EL SALVADOR: SIZE DISTRIBUTION AND TENURE OF HOLDINGS, AND NUMBER OF PAID WORKERS, 1971

Size of Holdings (Ha.)	All Holdings			Wholly Owned		Other than Wholly Owned (N)						
										Mixed		
	N	Area (Ha.)	Paid Permanent Workers	N	Area (Ha.)	Total (N)	Area (Ha.)	Rented with Promise of Sale	Wholly Rented	Under Colonia	Part Owned and Part Rented	Part Free and Part Rented	Other Forms of Tenure
All	270,868	1,451,894	87,033	108,014	1,105,395	162,454	346,499	4,408	76,256	17,018	38,349	7,831	20,996
Under .5	61,257	18,425	27,978	25,436	118,173	40,759	167,277	--	--	--	--	--	--
.5–1	71,207	51,862		17,312		53,895							
1–2	59,083	81,039		18,940		40,253							
2–3	25,357	61,245		12,234		13,123							
3–4	9,905	34,361		5,482		4,422							
4–5	8,152	36,378		5,368		2,784							
5–10	15,598	110,472	25,761	11,310	508,984	4,288	98,101	--	--	--	--	--	--
10–20	9,164	126,974		7,532		1,632							
20–50	6,996	215,455		6,113		873							
50–100	2,238	154,184		1,997		281							
100–200	1,103	152,056	15,287	963	290,579	140	52,359	--	--	--	--	--	--
200–500	636	190,882		829		107							
500–1,000	139	95,081	8,309	122	189,679	17	28,962	--	--	--	--	--	--
1,000–2,500	48	74,045		30		9							
2,500 and over	15	48,535		14		1							

SOURCE: 1971 Agricultural Census. The Census is available in Ministerio de Economía, Dirección General de Estadística y Censos, *Tercer Censo Nacional Agropecuario 1971*, vol. II (San Salvador, January 1975), and FAO, *Report on the 1970 World Census of Agriculture*, Census Bull. No. 25, Feb. 1978. Note, however, that the FAO publication of the Census data simply characterizes the holdings that were "rented with promise of sale" as here "in ownerlike possession." The FAO also lumps together the two categories "mixed: part owned and part rented" and "mixed: part free and part rented" under the less descriptive joint designation "holdings operated under more than one form of tenure," and erroneously describes the "other forms of tenure" category as "holdings operated under other single forms of tenure" (the Census discussion clearly states that some mixed tenure-forms are also included in this category).

Table 3701

EL SALVADOR: SIZE DISTRIBUTION AND DISAGGREGATED TENURE DATA FOR MIXED HOLDINGS, 1971

Size of Holdings (Ha.)	Part Owned and Part Rented				Part Free and Part Rented			
	N Holdings	Area Owned	Area Rented	% Area Rented	N Holdings	Area Free	Area Rented	% Area Rented
All	36,345	80,625	52,962	40	7,831	3,023	6,602	69
Under .5	2,857	336	723	68	1,728	155	471	75
.5–1	8,043	2,044	4,029	66	2,883	536	1,620	75
1–2	11,602	6,959	9,383	57	2,267	942	2,155	70
2–3	5,348	6,602	6,357	49	615	507	960	65
3–4	2,376	4,788	3,441	42	147	180	327	64
4–5	1,614	4,513	2,724	38	77	157	184	54
5–10	2,695				80			
10–20	1,067	40,656	17,337	30	22	541	699	56
20–50	506				8			
50–100	141				3			
100–200	50	11,707	5,208	31	1	1	180	99
200–500	30				--	--	--	--
500–1,000	3				--	--	--	--
1,000–2,500	2	3,921	3,277	52	--	--	--	--
2,500 and over	--				--	--	--	--

SOURCE: 1971 Agricultural Census. The separate figures can be found in the full government-published version, while the FAO publication will yield the information for both "mixed" holdings categories together.

Table 3702

EL SALVADOR: SOURCE OF INCOME FOR FAMILIES ON THREE CATEGORIES OF SMALLER HOLDINGS, 1971

Region	Farm Size (Ha.)	Net Income from Farm Holding (US)	Other Income (US)	% Income from Farm Holding
1	.5–1	$ 322.90	$ 303.09	51.6
	1–2	668.54	339.66	66.3
	3–4	1,705.23	432.14	79.8
2	.5–1	291.48	287.06	50.4
	1–2	524.29	306.27	63.1
	3–4	1,112.62	340.40	76.6
3	.5–1	259.04	250.76	50.8
	1–2	479.21	191.78	71.4
	3–4	1,117.20	300.55	78.8
4	.5–1	253.40	225.45	52.9
	1–2	426.07	228.09	65.1
	3–4	958.90	278.55	77.5
All	.5–1	--	--	51.6
	1–2	--	--	65.9
	3–4	--	--	77.9

SOURCE: Samuel Daines and Dwight Steen, *El Salvador—Statistical Analysis of the Rural Poor Target Group*, report prepared for the Agency for International Development Mission to El Salvador (San Salvador, June 1977), tables 80 and 81, based on authors' computation from data in the 1971 Agricultural Census.

Table 3703

EL SALVADOR: POPULATION DISTRIBUTION AND EAP, 1971

	Population				EAP		
						In Agriculture	
Category	N	%	Average Family Size	N Families	Average per Family	N	%
Urban	1,405,532	39.5	5.2	271,478	1.82	..	..
Rural	2,149,116	60.5	5.6	385,558	1.74	..	..
Total	3,554,648	100.0	5.4	657,036	1.78	625,490	53.6

SOURCE: 1971 Population Census.

The total of the foregoing is between 128,015 and 149,011 holdings wholly or predominantly rented.

The remaining holdings were operated predominantly or wholly under ownership rather than tenancy. These consisted of 108,014 that were wholly owned, 13,836 mixed but primarily owned, and an unknown proportion of the 20,996 "other forms" category. Altogether, between 121,857 and 142,853 holdings were wholly or predominantly owned.

Of the 61,257 families who were associated with a holding under .5 hectares—and thus apparently gained the bulk of their income from agricultural labor performed elsewhere rather than from that holding—between 35,203 and 40,759 were counted among those on a holding wholly or predominantly rented, while between 20,498 and 26,054 were on a holding wholly or predominantly owned. (The uncertainty relates to the fact that 5,556 out of the 20,996 "other forms" holdings were of this small size.)

Thus, as of 1971 there were three main groups of potential beneficiaries of any prospective land reform process:

Group A: 80,132 families wholly dependent on performing agricultural labor for hire.

Group B: A further 61,257 families primarily dependent on performing agricultural labor for hire.

Group C: Between 128,015 and 149,011 families on holdings that were wholly or predominantly rented (with a further 13,836 families on holdings partly but not predominantly rented).

There is an overlap between the latter two groups of between 35,203 and 40,759 families on predominantly rented holdings that were under .5 hectares, making those families depend primarily on performing agricultural labor for hire off the holding. Thus, the total number of families in the three groups is between 228,645 and 249,641,[31] or between 65 and 71% of the total number of families that made their living from agriculture,[32] plus another 13,836 families on holdings partly rented as an auxiliary group of potential beneficiaries.

[31] Note that the presence of "other forms" of tenure on 5,556 holdings under .5 hectares requires that, if the high Group C figure of 149,011 is used, the high overlap figure of 40,759 must be subtracted.

[32] This is also equal to between 35 and 38% of all families in El Salvador, as of 1971. I have elsewhere suggested that the ratio of nonland-owning agricultural families to total families (both urban and rural) may have important predictive significance with respect to civil violence. See Roy L. Prosterman, "'IRI' A Simplified Predictive Index of Rural Instability," *Comparative Politics* 8.3 (1976). 339.

It remains now to attempt to project these estimates to 1980, when the land reform process was initiated. To assist us in this, we have the mid-year 1980 population estimate for El Salvador of 4.8 million,[54] and the changes shown between the 1961 and 1971 agriculture censuses,[55] and 1961 and 1971 population censuses,[56] from which we may make at least broad projections of trends (see table 3704).

Based on the estimates in table 3704 for 1980, the three groups described above had approximately the following membership in 1980 when the land reform was announced:

Group A: Between 113,000 and 133,000 families wholly dependent on performing agricultural labor for hire.

Group B: A further 71,000 to 73,000 families primarily dependent on performing agricultural labor for hire.

Group C: Between 127,000 and 173,000 families on holdings that were wholly or predominantly rented (with a further 15,000 families on holdings partly but not predominantly rented).

There is an overlap between the latter two groups, in 1980, estimated at between 41,000 and 49,000 families on predominantly rented holdings under .5 hectares, making those families (also counted in Group B) depend primarily on off-holding agricultural labor for hire. Thus, the total number of families in the three groups is between 270,000 and 330,000,[57] or somewhere between 62 and 77% of the families that made their living from agriculture in 1980;[58] plus a further 15,000 families on holdings partly rented constituting an auxiliary group of potential beneficiaries.

[54] Population Reference Bureau, *1980 World Population Data Sheet.*

[55] 1971 Agricultural Census, II, pp. xxx-xxxiv. (See also FAO, *Report on the 1970 World Census of Agriculture*, Census Bull. No. 25, p. 36.)

[56] 1971 Population Census, II, p. xxix.

[57] Subtracting the high "overlap" figure if the higher Group C figure is used. See note 22.

[58] Equal to between 30 and 37% of all families, as of 1980.

Table 3704

EL SALVADOR: 1961 AND 1971 DATA AND PROJECTIONS TO 1980

Item	1961	1971	1980[P]
1. Total population	2,510,984	3,554,648	4,800,000
N Families	464,997	657,036	889,000
2. % EAP in agriculture	59.7	53.6	48-49
3. N Agricultural Families	278,000	351,000	427,000-436,000
4. Proportion of agricultural families associated with a holding	82	77	71-72
5. N Holdings	226,896	270,868	303,000-314,000
6. Proportion of Holdings Rented or Predominantly Rented	52-55	47-55	42-55
7. Rented and Predominantly Rented Holdings	117,986-124,793	126,015-149,011	127,000-173,000
8. (Additional N Holdings Partly Rented)	(12,185)	(13,836)	(15,000)
9. N Agricultural Families Not Associated with a Holding as Either Owner or Renter	51,104	80,132	113,000-133,000
10. N Agricultural Families Associated with Holding under .5 Ha.	49,459	61,257	71,000-73,000
11. N under .5 Ha. that are predominantly rented	28,423-31,383	35,203-40,759	41,000-49,000

SOURCE:

Line 1. Based on actual figures or current estimates, and assumes constant ratio of 5.4 per family.
Line 2. Assumes continuation of 1961-71 census trend.
Line 3. Based on line 2.
Line 4. Assumes continuation of 1961-71 census trend.
Line 5. Actual for 1961-71, based on corresponding proportion in line 4 for 1980.
Line 6. Uses 1961-71 census proportions to extrapolate a maximum likely range for 1980.
Line 7. Actual for 1961-71, based on corresponding proportion for line 6 in 1980.
Line 8. Actual for 1961-71, 1980 estimate is based on a relatively constant proportion of roughly 5% of line 5.
Line 9. Line 3 minus line 5.
Line 10. Calculates 1961 under .5 hectares as same proportion of all holdings under 1 hectare as in 1971 (figure differs by less than 2,000 from a calculation based on same proportion of all holdings as in 1971), and calculates 1980 based on continuation of trend in under-1-hectare holdings (47.2% of all holdings in 1961, 48.9% in 1971, 50.4% assumed in 1980) and same proportion of all under 1 hectare as in 1971.
Line 11. Shows one-third the "gap" of 1971 for 1961, since no more than one-third as many were in comparable "other holdings" category, and for 1980 applies 1971 proportions to figure in line 10.

As of early 1982, Phase I of the reform had expropriated 223,000[29] hectares, a figure closely comparable to the 218,641 hectares shown in table 3700 for all operational holdings of that size (adding 189,679 hectares wholly owned and 28,962 hectares other than wholly owned, which were expropriated under the law without distinction according to the total size of the owner's holdings). This 1982 figure, however, reflects both reductions in the form of allowance of most "reserve area" claims and additions in the form of voluntary offering for sale to the government of some estates under 500 hectares. The number of families settled on these estates as beneficiaries was approximately 50,000,[30] with some thousands of additional families expected to be settled.

Phase III, or "Land-to-the-Tillers," expropriated all tenanted holdings except those operated as single integral units of more than 100 hectares,[31] and those of 500 hectares or more, which were taken under Phase I. The potential of Phase III was therefore to include the 264,378 hectares (167,277 in operational holdings below 5 hectares, 98,101 in operational holdings of 5 up to 100 hectares) shown in table 3700 for area of holdings other-than-wholly-owned up to 100 hectares in size, minus 68,924 hectares owned or rent-free in "mixed" holdings (27,727 in holdings below 5 hectares, 41,197 in holdings of 5 to 100 hectares), minus an unknown proportion of the 37,455 hectares (21,014 in holdings below 5 hectares, 16,441 in holdings of 5 to 100 hectares) that were in the "other forms" subcategory, and with small adjustments reflecting changes to 1980. However, because no individual ex-tenant can claim more than a maximum of 7 hectares under the law—with the excess being expropriated, but for redistribution to other beneficiaries—it seems likely that most potential beneficiaries who come forward to claim their rights and confirm for that land a place on the formal roll of expropriated holdings will be those with holdings under 20 hectares. Even some holders in the 10-to-20 hectare range may prefer the "trade-off" of attempting sub rosa quasi-tenancy on the whole holding to formalizing their ownership of 7 hectares and loss of cultivation of the rest. Very roughly, one can therefore estimate the probable area to be covered with active assistance by the erstwhile tenants as between 119,000 and 140,000 hectares in the below-5-hectare category, plus a further 6,000 to 8,000 hectares in the 5-to-10 hectare category.[32] All remaining lands legally subject to Phase III (including around 5,000 of the total beneficairy families), up to 70,000 hectares, will have to be actively sought out and identified by the administrators of the program—which means that it would be useful to separately identify these lands in discussing the program's scope and effects.

[29] See Paarlberg, Cody, and Ivey, *Agrarian Reform in El Salvador.*

[30] Personal communication (see note 14, above). Earlier estimates of "82,000" families benefited, made by the Instituto Salvadoreño de Transformación Agraria (ISTA), in *Descripción Situacional de la Reforma Agraria en El Salvador* (San Salvador, October 1980), appear to have been too high. It appears that the same document also provides too high an estimate of cropland on the Phase I estates, although for many months it was the only estimate available. Latest cropland estimates appear in table 3705 below.

[31] See note 9, above.

[32] This is based on the assumption that at least one half of the land in that category—all of that on holdings up to 7 hectares, and some of that on holdings over 7 and up to 10 hectares—would be formally claimed. The total area for other-than-wholly-owned holdings of this size is approximately 30,000 hectares, the owned or free area in "mixed" holdings 13,000 hectares, and the "other forms" subcategory approximately 4,000 hectares.

98-270 O - 83 - 14

Expected beneficiary families of the "active-participation" portion of Phase III are in the range of 137,000 to 183,000 (the total number of families in Group C above, including the estimated 15,000 on holdings partly but not predominantly rented, but less an estimated 5,000 families who are unlikely to seek formal confirmation of their ownership because their total holding is significantly above 7 hectares). If the lands of these additional 5,000 families are identified, enough additional land for redistribution to several tens of thousands of additional non-landowning or land-short families in Group A or Group B would be available.

Phase II, the deferred phase of the land reform, would include, as projected from table 3700, roughly 1,700 holdings with about 343,000 hectares, although the potential assertion of 1,700 separate "reserve area" claims ranging from 100 to 150 hectares, depending on soil quality, would substantially reduce the expected net amount to 170,000 hectares or less.

The remaining proportions of land are encompassed in the 115,000 or more wholly owned holdings below 100 hectares in size which are projected from table 3704 (line [5] minus lines [7] and [8]).

As this is written (see p. 000, above), serious problems remain in the confirmatory titling under Phase I and Phase III, and in the preservation of beneficiary rights aginst illegal evictions under Phase III. However, tabie 3705 provides an accurate picture of how much land, according to law, has been affected by the two implemented phases of the reform, Phase I and Phase III. It also shows the relative scope of the deferred Phase II.

Table 3705 shows that the combined Phases I and III have expropriated between 27 and 30% of all land in farms, including 29-34% of all cropland and 34-41% of all land planted in grain crops (and 33-38% of all land planted in beans). Proportionately less "export" cropland has been affected; on the extremely conservative assumption used here, that no Phase III land is used for these crops, the reform via Phase I has affected about 14% of coffeeland, 23% of cotton land, and 36% of caneland, as well as 44% of other cropland (fruits, nuts, tobacco, industrial fibers, and other minor crops combined).

Table 3705

EFFECT OF EL SALVADOR LAND REFORM, 1980-82

Category	Total		Expropriated						To Be Expropriated		Other Lands	
			Phase I		Phase III[a]		Phase III[b]		Phase II[c]			
	Area	%	Area	%	Area	%	Area	%	Area	%	Area	%
1. Land in Farms	1,452,000	100.00	223,000	15.4	125,000-148,000	8.6-10.2	47,000-70,000	3.2-4.8	343,000	23.6	668,000	46.0
2. Cropland	798,000	100.00	94,000	11.8	112,000-133,000	14.0-16.7	24,000-35,000	3.0-4.4	108,000-138,000	13.5-17.3	398,000	49.9
3. Land in Grain	435,000	100.00	23,000	5.3	101,000-120,000	23.2-27.6	22,000-32,000	5.1-7.4	23,000-38,000	5.3-8.7	222,000	51.0
4. Land in Beans	55,000	100.00	5,000	9.1	11,000-13,000	20.0-23.6	2,000-3,000	3.6-5.5	2,000-5,000	3.6-9.1	29,000	52.7
5. Land in Coffee	160,000[a]	100.00	22,000	13.8	--	--	--	--	49,000	30.6	89,000	55.6
6. Land in Cotton	88,000	100.00	20,000	22.7	--	--	--	--	26,000-36,000	29.5-40.9	32,000	36.4
7. Land in Sugarcane	33,000	100.00	12,000	36.4	--	--	--	--	7,000	21.2	14,000	42.4
8. Other Cropland	27,000	100.00	12,000	44.4	--	--	--	--	1,000-3,000	3.7-11.1	12,000	44.4

a. Active participation portion.
b. Remainder, requiring administrative identification of parcels.
c. Only about one-half of these lands would actually be affected by Phase II.

SOURCE: For totals,

Line 1. Declined from 1961 to 1971 census (1.581 million to 1.452 million hectares; the Paarlberg, Cody, and Ivey report, *Agrarian Reform in El Salvador*, mistakenly uses "2,104,000" hectares as total land in farms, a figure which is actually a net figure for the total area of El Salvador, (see FAO, PY, 1977, table 1), although the Paarlberg, Cody, Ivey report also correctly states that approximately "70%" of the entire area of El Salvador, namely about 1.47 million hectares, is contained in farms), and is here assumed to be in same approximate range in 1980 as in 1971.

Line 2. Virtually unchanged in 1961-71 (652,000-653,000 hectares). Calculated on the basis of lines 3 through 8.

Line 3. Based on USDA Foreign Agriculture Circular estimates for 1979 in *Reference Tables on Area, Yield, Production of All Grains*, Dec. 18, 1980; *World Coffee Situation*, Jan. 1982 (1981 estimate, but changed very little from area in earlier years); *World Cotton Situation*, Feb. 1982 (1975-79 average); *World Sugar Supply and Distribution 1956/57-1980/81*, Dec. 1981.

Line 4. Based on FAO, PY, 1977, table 23.

Line 5. See source for line 3.

Line 6. See source for line 3.

Line 7. See source for line 3.

Line 8. Based on 1977 figures for individual crops calculated from FAO, PY, 1977, and (where not otherwise available for minor crops) from the 1971 census.

Phase I estimates are based on Paarlberg, Cody, Ivey report.

Phase III figures are based on rough estimates, derived from 1971 Census ratios, that 90% of rented area on holdings under 5 hectares, 75% on holdings of 5-10 hectares, and 50% on holdings of 10-100 hectares is used for crops, with the further very conservative assumption that no coffee, cotton, sugarcane, or industrial crops are planted on such rented land and that essentially the only crops are grain and beans. The Phase III grain-to-beans area ratio is based on 1971 Census data for all holdings of that size category. Line 1 is based on 1971 Census, as discussed on p. 000 above.

Phase II figures are a range, with the lower figure in each case the result of assuming increases in that category proportionate to increases for all lands or for Phase I lands, whichever is *lower*, and the higher figure in each case the result of assuming such proportionate increases based on whichever is *higher*, up to a ceiling that would reflect the point at which the combined area increases for Phase I and Phase II holdings would equal the total increase for all holdings for that crop since 1971. (This is based on the reasonable assumption that overall and Phase I estimates are the firmest, and that calculated figures for Phase II should not exceed the point at which growth of area planted on those lands would have had to be at the expense of area lost on other lands since 1971.) Calculation of Phase II "Cropland" is then based on addition of the minima and maxima for line 3 through line 8. Line 1 is based on 1971 Census.

Finally, "Other Lands" is a residual minimum figure, based on the maxima in all other categories.

[a]The most recent USDA estimate for coffee increases the total area to 186,000 hectares. Assuming the area for Phase I holdings remains unchanged from the Paarlberg, Cody, Ivey report figure, it is theoretically possible that the Phase II figure could, if the entire 26,000 hectare increase were attributed to those holdings, be as high as 75,000 out of 186,000 hectares, or 40.3 percent; on the more likely assumption that the increment has been shared between Phase II and "other lands" in proportion to the coffee previously estimated on those lands, the Phase II figure would be 58,000 out of 186,000 hectares, or 31.2 percent (with "other lands" at 106,000 hectares, or 57 percent), while on what would seem the maximum realistic assumption, that half the increase had come on Phase II lands, the figure for those lands would be 62,000 hectares, or 33.3 percent (with "other lands" at 102,000 hectares, or 54.8 percent). On the latter assumptions, Phase II lands would have between 117,000 and 151,000 out of a new total of 824,000 hectares of cropland, or 14.2-18.3 percent.

It should be noted, however, that the deferred "Phase II," while significant, represents (even if the entire amount of land in such holdings is considered, without regard to the allowance of "reserve area") a much smaller proportion of El Salvador's cropland (14-17%, or just half that in the combined Phase I and III) and grain/bean land (roughly one-quarter as much). Phase II represents more coffeeland than Phases I and III, about 31%, but still far less than the extraordinary figures suggested in some publications.[33] It also represents more cotton land, about 30-41%. These are, in addition, figures based on the assumptions stated in table 3705, which deliberately err in the direction, if they err at all, of overstating the proportions of land in the Phase II category, at the expense of the "other lands" category which represents lands not within the ambit of the land reform legislation.

Of this latter category, it may be stated, only about one-quarter of such land, as of the 1971 census, was even in an "intermediate" category of 50-100 hectare holdings; three-quarters was in much smaller, generally owner-operated holdings of under 50 hectares. Nearly the same amount of coffee found in Phase II holdings in 1971, for example, was found in 37,000 much smaller holdings of under 20 hectares (38,000 hectares, or 26% of the then total of 147,000 hectares).

Indeed, one plausible way of looking at the reform in terms of areas affected is to suggest that now, of all lands in El Salvador, *only* the "Phase II" lands—with 14-17% of cropland and 31% of coffeeland—represent lands outside the ambit of the small- and medium-owner-operator and cooperative-farm system which otherwise prevails under the law.

In terms of families affected, one may compare the approximately 50,000 families of Phase I beneficiaries and 137,000-183,000 families of "active participation"-motivated Phase III beneficiaries, altogether 187,000 to 233,000 families, with the total estimated number of families, 285,000 to 345,000 (including, in both totals, 15,000 families on holdings partly rented) in the three potential-beneficiary groups described above. This is 66-67%, two-thirds, of the number of such potential-beneficiary families (or, excluding the 15,000 figure from both totals, 64-66%).[34]

All of this assumes, of course, that what has been legally enacted will be enforced, that beneficiaries will be protected, for example, against illegal eviction by ex-landlords concerting with members of the local security forces; but this is a very different kind of question from the question of what, in law, has clearly been provided for relative to the agricultural resources and human needs of Salvadoran society. In relation to the latter issue, it appears that there can be little doubt that a highly significant land reform has been brought into legislative being.[35]

[33] Raymond Bonner reached the conclusion that Phase II lands represented "88 percent" of coffeeland, based on the elementary error of assuming that all coffee not produced on "Phase I" lands (which he took to be "12 percent") must be produced on "Phase II" lands. See Bonner, "Salvador's Land Redistribution Plan is Provoking Fervor For and Against," *New York Times*, March 5, 1982.

[34] There remains the possibility for distribution of benefits to additional families, as well, within the scope of the combined Phases I and III: this would require administrative efforts to bring the total number of families on Phase I estates up to the full "carrying capacity" of the land, and to identify and redistribute, under Phase III, previously tenanted single operational holdings of over 7 and up to 100 hectares. It is conceivable that as many as one-half of the remaining potential-beneficiary families could receive access to land of their own by one of these two routes.

[35] The discussion here does not, of course, deal with the possibilities of repeal, or substantial revision, of the existing land reform legislation by the Constituent Assembly elected on March 28, 1982.

ANNEX C

REPORT ON THE

1970 WORLD CENSUS OF AGRICULTURE

Census Bulletin No. 25, February 1979

RESULTS BY COUNTRIES

El Salvador

Mexico

St. Lucia

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
Rome, 1979

Area: in hectares
Production: in metric tons

RESULTS CLASSIFIED BY SIZE OF TOTAL AREA OF HOLDING

	All holdings	Under 0,5 ha	0,5 and under 1 ha	1 and under 2 ha	2 and under 3 ha	3 and under 4 ha	4 and under 5 ha	5 and under 10 ha	10 and under 20 ha	20 and under 50 ha	50 and under 100 ha	100 and under 200 ha	200 and under 500 ha	500 and under 1 000 ha	1 000 and under 2 500 ha	2 500 ha and over
Sugarcane for sugar																
Number of holdings reporting	11 012	389	1 027	2 083	1 606	843	797	1 797	1 129	867	271	109	58	24	9	3
Area	23 251	49	206	730	778	450	517	1 534	1 516	2 080	2 198	1 148	3 467	2 644	2 903	3 031
Production	1 639 523	2 804	13 501	57 874	61 015	27 831	35 831	111 946	148 974	168 385	148 910	76 679	246 441	167 166	189 098	182 268
Cotton																
Number of holdings reporting	2 997	89	232	417	429	191	198	480	347	287	112	83	86	32	9	5
Area	64 187	25	131	365	636	361	523	2 043	2 879	5 713	5 068	8 534	17 092	10 923	5 981	3 913
Production (seed cotton)	153 071	51	272	776	1 355	813	1 168	4 814	6 403	13 233	12 335	20 932	39 621	27 290	16 764	7 244
Kenaf																
Number of holdings reporting	51	1	3	12	1	4	4	7	7	2	7	2	-	-	-	1
Area	1 549	-	1	2	-	2	4	10	10	10	224	27	-	-	-	1 259
Production	2 638	-	2	1	-	1	6	16	19	13	468	42	-	-	-	2 070
Groundnuts (Peanuts)																
Number of holdings reporting	464	10	46	118	88	34	28	54	40	37	3	3	-	3	-	-
Area	242	2	9	34	30	9	13	26	20	89	6	1	-	3	-	-
Production	131	1	7	32	23	8	9	18	12	17	1	1	-	2	-	-
Groundnuts, grown mixed with other crops																
Number of holdings reporting	266	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Area	174	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Production	200	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tobacco																
Number of holdings reporting	954	38	84	182	162	71	75	166	104	56	10	4	1	1	-	-
Area	977	6	21	54	70	46	68	216	236	172	63	9	5	11	-	-
Production	1 132	5	20	55	64	49	116	273	257	190	81	10	3	9	-	-
Watermelons																
Number of holdings reporting	1 681	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Area	1 671	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Canteloupes																
Number of holdings reporting	422	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Area	169	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tomatoes																
Number of holdings reporting	5 439	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Area	1 486	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Areas in hectares

Productions in metric tons

HOLDINGS CLASSIFIED BY SIZE OF TOTAL AREA OF HOLDING

	All holdings	Under 0,5 ha	0,5 and under 1 ha	1 and under 2 ha	2 and under 3 ha	3 and under 4 ha	4 and under 5 ha	5 and under 10 ha	10 and under 20 ha	20 and under 50 ha	50 and under 100 ha	100 and under 200 ha	200 and under 500 ha	500 and under 1 000 ha	1 000 and under 2 500 ha	2 500 ha and over
Cashew nuts																
In compact plantation																
Number of holdings reporting	1 217	147	149	205	124	74	67	146	108	83	42	35	18	3	3	-
Area	680	6	12	22	16	9	15	27	19	39	80	22	88	2	173	-
Number of trees	183 349	3 083	5 617	9 732	6 725	4 682	5 534	10 036	7 439	11 961	10 114	9 860	14 330	834	19 380	-
trees of productive age	(138 734)	(2 477)	(4 451)	(7 211)	(5 024)	(3 883)	(4 323)	(8 174)	(5 545)	(10 316)	(14 240)	(5 811)	(11 806)	(804)	(14 547)	(-)
trees of non-productive age	(44 615)	(606)	(1 166)	(2 541)	(1 701)	(599)	(1 211)	(1 862)	(1 894)	(1 645)	(3 874)	(4 027)	(2 724)	(30)	(4 833)	-
Production	58 570	1 136	2 387	4 003	2 465	2 315	2 061	3 900	2 920	3 821	4 722	2 817	5 905	319	19 721	-
Scattered																
Number of holdings reporting	65 433	8 686	9 755	9 899	5 305	2 305	1 898	3 561	2 043	1 315	388	210	132	33	3	-
Number of trees	239 021	28 423	38 930	44 705	27 592	14 850	12 334	26 826	15 444	13 587	6 510	4 498	4 232	1 040	58	-
Coffee																
Number of holdings reporting	40 779	8 415	6 356	7 369	4 669	2 210	1 892	3 858	2 529	2 208	782	412	213	43	19	4
Total area	147 039	1 196	2 059	3 810	3 894	2 498	2 961	9 227	12 527	27 513	23 511	32 595	21 999	8 168	4 535	344
trees of productive age	(135 172)	(1 121)	(1 900)	(3 521)	(3 593)	(2 286)	(2 738)	(8 533)	(11 559)	(25 513)	(21 664)	(30 648)	(20 082)	(7 813)	(4 053)	(146)
trees of non-productive age	(11 867)	(75)	(159)	(289)	(301)	(212)	(225)	(694)	(968)	(2 000)	(2 045)	(2 047)	(1 917)	(355)	(482)	(198)
Number of trees	264 760 180	2 380 930	3 895 573	6 970 323	6 795 775	4 417 879	5 473 846	17 154 497	24 753 827	52 703 454	42 642 438	39 028 172	38 444 176	13 188 380	6 444 120	693 600
trees of productive age	245 354 717	(2 249 401)	(3 612 853)	(6 435 895)	(6 253 937)	(4 055 715)	(5 078 039)	(15 919 728)	(23 055 455)	(49 097 032)	(39 148 862)	(36 277 311)	(35 618 964)	(12 558 061)	(5 750 054)	(244 600)
trees of non-productive age	(19 413 464)	(149 529)	(282 720)	(534 428)	(543 838)	(362 164)	(395 807)	(1 234 769)	(1 698 372)	(3 606 422)	(3 493 576)	(2 750 861)	(2 825 212)	(631 299)	(694 066)	(211 000)
Production	125 434	705	1 140	2 168	2 154	1 427	1 718	5 914	9 131	23 742	21 510	24 071	21 756	6 660	3 263	123
Sisal																
Number of holdings reporting	79	10	7	7	5	5	8	11	4	9	3	5	2	-	-	1
Area	137	1	1	2	1	-	2	1	2	3	6	3	3	-	-	112
Number of trees	32 547	536	336	640	519	154	865	755	359	1 628	3 228	1 625	2 076	-	-	80 000
trees of productive age	(27 680)	(446)	(229)	(486)	(449)	(114)	(816)	(686)	(260)	(905)	(768)	(875)	(1 466)	(-)	(-)	(80 000)
trees of non-productive age	(5 067)	(80)	(107)	(154)	(70)	(40)	(49)	(69)	(99)	(723)	(2 460)	(750)	(610)	-	-	(-)
Production	206	2	1	1	1	-	2	2	1	1	4	6	-	-	-	184
Sugarcane																
In compact plantation																
Number of holdings reporting	2 161	579	228	242	182	76	85	193	155	168	101	69	56	17	9	5
Area	3 440	60	56	78	64	26	32	106	71	131	237	153	779	183	1 442	50
Number of trees	1 547 300	31 301	24 019	30 507	32 191	11 361	13 090	49 808	32 653	55 572	108 519	67 743	389 392	68 784	603 580	31 600
trees of productive age	(823 520)	(16 860)	(17 873)	(22 458)	(22 820)	(8 269)	(10 554)	(37 660)	(21 244)	(41 354)	(60 163)	(55 389)	(165 787)	(56 709)	(256 804)	(29 500)
trees of non-productive age	(724 380)	(14 441)	(6 146)	(8 049)	(9 371)	(3 092)	(2 536)	(12 148)	(11 409)	(14 218)	(48 356)	(12 354)	(223 605)	(9 975)	(346 776)	(1 900)
Production	226 019	6 048	5 226	5 372	5 814	1 705	2 242	8 490	5 665	8 184	14 254	12 716	43 333	14 264	84 304	7 522
Scattered																
Number of holdings reporting	27 320	4 749	3 105	3 333	3 203	1 543	1 291	2 466	1 563	1 170	469	239	133	41	12	3
Number of trees	382 778	16 013	19 558	23 841	16 935	9 069	9 858	23 147	20 550	23 890	16 218	8 024	11 814	2 143	1 615	95

ANNEX D

SUGGESTED CONDITIONS FOR A.I.D. DISBURSEMENT

Title and Compensation

1. Restore the receipt and processing of new applications to the level achieved by FINATA during the latter half of 1981, i.e., 4,000 per month, to attain FINATA's own one-year goal of 50,000 by the end of FY 83.
2. Restore the process of issuing provisional titles to the previous level attained by FINATA in late 1981, i.e., 4,000 per month, to achieve FINATA's one-year goal of 35,000.
3. By January 1, 1982, be issuing final titles at the rate of at least 1,000 per month, thereafter approaching the rate of issuance of provisional titles.
4. Throughout the period, compensation will be paid commensurate with the issuance of final titles.

Evictions

1. Halt all illegal evictions of beneficiaries from their land, with orders to the Armed and Police Forces to protect the rights of all beneficiaries and to arrest ex-landowners who attempt to evict them.
2. Restore all illegally evicted beneficiaries to their land, and protect them from re-eviction, at the rate of 1,000 a month.

Effective Conditions

Continuing U.S. assistance (ESF and military) should be linked regularly and automatically, month-by-month, to performance by the Salvadoran Government in achieving the goals set forth here, or such reasonable figures as can be agreed upon with the Salvadoran government.

When the monthly goal is met, full aid will be forthcoming; if only 80%, or 50% of the goals are achieved, aid will be reduced accordingly. Thus the level of aid would be determined automatically by the Salvadorans themselves.

Precedent for this kind of formula: the Nunn Amendment, linking the level of U.S. troops in Germany automatically to the level of the Germans meeting their offset agreement.

Technical Assistance:

To assist in the achievement of these goals, a technical team of experts on land-to-the-tiller type land reform should be provided by USAID to assist and train Salvadoran officials in speedy titling and compensation procedures.

Any necessary computer and aerial mapping equipment, as well as training in its use, should also be provided.

The CHAIRMAN. Thank you very kindly. We appreciate this very much.

Senator Dodd?

Senator DODD. Mr. Chairman, I would like to focus a little on the land reform issue. I started to ask the question earlier about the language of this thing, and I think it would just take too much time for seven panel members to discuss language. But I gather from the testimony that we have heard that at the very least we find ourselves in a box, at least the panel members do, with the exception maybe of one, and maybe not even in the case of one, everyone seems to feel as though "substantial," using the language of the legislation, "concerted and significant effort to comply with internationally recognized human rights, and substantial control over the elements of the armed forces, and continued progress in land reform," that at the very least that is shaky, and in most cases difficult to make, but that assistance should be still forthcoming.

So it is a paradox, a contradiction, if you will, at the very least. Let me try to get at something that was raised this morning about the land reform by Secretary Enders. Secretary Enders made the claim that one of the reasons that land reform, in terms of title applications, had fallen off so dramatically was the fact that the left and the insurgency movements were making it virtually impossible for the process to move forward or for applications to be forthcoming.

Now, Mr. Doherty, this morning I was privileged to spend about an hour or an hour and a half with the campesinos who are sitting in the room here with us, but I regret that I was not able to be with Senator Kassebaum yesterday. I had an amendment on the floor at the time you were meeting with them.

One of the statements that was made at that time was that in fact the left really did not bother the land reform that much because it was too sacrosanct an issue to really disrupt it and thereby run the risk of incurring even further opposition in the countryside. That was what I heard this morning from the campesino leaders.

Mr. Enders said that there is a distinction, that it was the activity of the insurgents, the battles themselves, that would discourage land reform. Now, I am under the impression that the battles, if you will, in El Salvador are occurring in basically three places: Two provinces to the north on the Honduran border, and around San Salvador. The rest of the country has only sporadic problems in terms of actual engagements between the government and the insurgent forces. These engagements are almost nonexistent. The conflict is really limited to the above-mentioned areas.

Which is the correct assessment? Is, in fact, the left opposing the land reform program? Does the insurgency activity make it impossible for people who would otherwise apply for titles under phase III to make such applications? And I would address my questions particularly to Mr. Doherty and Dr. Prosterman.

Mr. PROSTERMAN. Senator, I think the assessment, that is essentially the assessment made by the campesinos, I think is the correct one. I think the left has indeed attacked the land reform only from the standpoint of propaganda—that is to say, they are willing to try to urge whoever will listen to do things that might assist the guerrillas in their efforts to win by violent and antidemocratic means.

But out in the field they are not, and have not in other countries been, willing to interfere physically with the actual land reform process, because they know if they do that they will gain the enmity of vast numbers of campesinos who are beneficiaries of that process. So I think there is actually very little substance, very little support, for Secretary Enders' suggestion. Nothing I have heard from the campesinos and nothing I have heard from any of the technical people involved in the process suggests to me that a major part of the problem is the security issue.

I do not think that is it.

Senator DODD. Mr. Doherty.

Mr. DOHERTY. I would agree that the primary intimidation of the campesinos under the land reform process comes from the extreme right and the death squads. There are contested areas where no land reform has taken place because of the left. You have pointed out three of them. There could be some fear on the part of the people who are promoting land reform and who are involved in land reform, where there is a possibility of an attack upon an electrical installation, or buses or transportation, where the left would intimidate people from coming forward and claiming the land.

But the primary problem clearly is from the far right. I would like to cite for the record two charts which show the applications that flow from the campesinos for participation in the program, how in February of this year and early March of this year they were running by actual count 4,432 applications for land and dropped in April to 1,300 and all the way down to the point where in June there were only 105 applications.

Now, why do I use the applications? Because that shows whether the campesino has confidence to come forward and make a claim without the owner shooting him, killing him, chasing him off the land, evicting him, or without the owner using some element of the armed forces or the security forces and putting him off the land, because traditionally the owners and the elements of the security forces were tied in.

Senator DODD. Let me ask you something, Mr. Doherty, before going further and asking others to comment. This morning during our meeting there were some stories about what happened after at least some members of the group came up to talk with those of us in Congress back in May, and on their return to El Salvador.

Would you relate to the committee some of those incidents?

Mr. DOHERTY. Well, the gentlemen are here presently and were introduced when I came into the room. Three of them have been intimidated who—one, Mr. Luis Grande Preza is with us today. Many times cars would follow him and try to run him down or knock him off the road. And about 3 weeks ago one did. There was no reason. He was getting out of the car, he was hit. He was hospitalized, he was knocked unconscious. He is still limping. He is not in very good shape.

Mr. Samuel Maldonado, who is with us today, and who is the secretary-treasurer of the UCS, has received four threatening phone calls since he got back. He has been accused of coming to the United States and that he is a traitor because he came up here and testified before the Congress, and that the Congress limited the aid program. There is supposedly a price on his head and he has been told how much that is.

Francisco Zaldana drives a pickup truck and he has been run off the road several times, and there are continued attempts on his life.

The clear message is that if they keep coming to Washington and using their democratic opportunity to express their views to the Members of the Senate and the House that are interested in their problem, that eventually they are going to be knocked off.

You must remember that every one of these people stand in the place of replacing a labor leader that has already been murdered.

Senator DODD. How many, by the way? What is the figure on how many people involved in the land reform program, since its inception, going back to 1980, have been killed?

Mr. DOHERTY. We have figures that would indicate that 160 activists involved in union activities and land reform have been murdered since its inception. Many other thousands of campesinos have been murdered simply because owners did not want a claimant around to make a claim under the title. How many thousands there we do not know.

We did collect a list of 862 names of campesinos that had been murdered, but this was all in 1980 and 1981. It started to improve in 1982—and frankly, even though the threats have taken place—the situation in July did improve for the campesinos. They cannot count one person who was murdered within their ranks during the month of July.

This is a terrible thing, to talk about that being an improvement in human rights, but when you have suffered as many losses as they have, that is important. They have only had nine cases of evictions in the month of July.

Senator DODD. You testified, Mr. Doherty, that you believe that the decision by this committee—let me go back a step—that the initial warning by the chairman that not 1 red cent, and the subsequent vote of 12 to 0 by this committee to reduce security assistance $100 million, was at least 90 percent of the reason, maybe you did not go further, but I gather you indicated it was substantially responsible for the government's change in its policy 180 degrees in the direction it was headed with the land reform. Is that correct?

Mr. DOHERTY. I have no doubt about that and neither do the gentlemen here who represent the workers and campesinos.

Senator DODD. Then here is my question, after all of that: What we are talking about here is what is the policy, what is the attitude. You know, we can threaten all sorts of things, but in the final analysis it is the Government of El Salvador that has to decide in which direction it is going to go.

Now, you tell me the people who have come up and testified about the deterioration of a program are threatened, intimidated, run off the road. It is quite clear that the reason the government changes its policy, if you will, is because the Congress says no more aid or reduces aid substantially.

How can we then certify in effect that there is progress, when in fact we find the very people who are honest enough to come up and talk about this program are being intimidated? The land reform by your own statistics and figures is deteriorating in the number of applications. And yet you tell me that we ought to continue to supply aid.

I am absolutely amazed at how you can draw that conclusion, after telling me categorically all of the things that you just did.

Mr. DOHERTY. Because of the paradox that you yourself properly pointed out at the beginning.

Senator DODD. I do not have a paradox.

Mr. DOHERTY. The paradox, very frankly, is that because of the pressures that you, Senator, along with Senator Kassebaum, brought on that government, they have taken steps to reinstitute the land reform through this decree, article 13, which was negotiated the last minute with the people behind me.

Senator DODD. But do you see what I am getting at? Is it because they wanted to do it or is it only because they are concerned they are not going to get the aid?

Mr. DOHERTY. It depends on who the "they" is. There are many people involved in the Government of El Salvador who want land reform and who are working toward it. And frankly, the UPD and the USC are convinced that the army now wants land reform. They are also convinced that Magaña wants land reform. They are also convinced that Mr. D'Aubuisson does not want land reform.

So it depends on who the "they" are. But the truth is, if you hold out the carrot and the stick and then people perform in order to try to have a nibble at the carrot, and then you do not let them have the nibble at the carrot, they have a good reason never to perform again. That is why the paradox.

I fail—and I repeat that it was difficult, when words like "continued progress" are used, to certify that indeed that did take place. But by the same token, I am very hesitant to take any action that would withdraw aid at this time, when it is so desperately needed to keep the land reform going.

Senator DODD. Does anyone else want to comment on this?

Mr. PROSTERMAN. Yes. I would make just one more statement on that same issue, Senator. I think one of the beauties of the notion of conditioning aid in a very strict way to quantitative performance goals is that it avoids the need for us having to speculate. It is a little like, I think it was, the old Nunn amendment, which back in the days when we were wondering whether West Germany was going to be able to make sufficient offset payments for U.S. troops stationed in West Germany, an amendment was passed which said, proportionate to the offset payments you make the troops will be retained there or withdrawn. If you do not make the offset payments, a certain proportion of the troops will be withdrawn, in commensurate proportions.

So we avoided by that method the need to have to speculate on whether the West Germans would or would not make offset payments up to a particular level. They were told where we stand.

And in this situation, what UPD and USC and myself and AIFLD and the Land Council are all suggesting is, by whatever formal means it is done, give the Salvadorans a very clear signal that the money is there but that the disbursement is zero until conditions subsequent are met. That is, they actually get to draw down those resources only if and as they meet the specified performance requirements.

Senator DODD. Let me just tell you about my own standpoint. I have a problem with the notion, even though, as you know, I have worked up a lot of this language along with others here on the committee. Let me just tell you the reason that I have some concerns about this kind of approach.

It gets you into the numbers game, and we have been playing numbers games here for the last week or so, since July 28, when everyone seems to admit that you cannot rely on anybody's numbers anyway. And what really I have been trying to determine is what our policy is, what is the attitude.

The land reform program was not running very well under Jose Napoleon Duarte. I do not think anyone questioned what his policy was with regard to land reform. Now, you may argue that land reform is actually running a little bit better numerically because applications are up 10 or 15 or 20, but if Mr. D'Aubuisson is running the program, by everyone's account the perception is that Mr. D'Aubuisson is against land reform.

It seems to me we ought to try to be focusing on what the policy is and what it is going to be, rather than this juggling of numbers that I think really distorts what we ought to be trying ultimately to achieve, and that is policies that reflect the attitudes that will bring about social and economic change in a country, and not trying to convince 9 members of a 17-member committee that my numbers are better than your numbers.

Mr. FINN. I would just say that I agree with that completely, and I was going to add that statement if you had not. Although I respect Roy Prosterman and his analysis and the idea of bringing leverage, it seems to me very difficult to be precise about certain numbers that have to be processed and certified.

I would say that one of the things that influences our judgment—let me put it like that—is the kind of progress that has been made, and not simply within the last 6 months or the last year, but within the longer framework.

Let me take one example to show how to evaluate that and the difficulty of evaluating it. I think and we at Freedom House think the elections that took place on March 28 were highly significant. A high proportion of people turned out to vote. In the history of El Salvador that was a remarkable event.

How do we evaluate what that means in terms of democratization? It certainly means that the process brought a lot of people, a lot of Salvadoran people to the polls. Now, we have the number, the figure 1.5 million people voted. We do not know what that means in the long range, but it does mean people had faith in the system on that particular date.

Those people, we hope, will be involved in the electoral process that should take place in 1983 or 1984. It is too difficult in the 6-month framework to evaluate what that means at this moment in terms of elections going to be held a year from now.

I do not mean the comment I am going to make as a criticism of the certification process, of the language. Just as you can get involved in a numbers game, you can get involved in a word game. That is, the meanings of "significant," "progress" and "substantial." Significant progress may be significant not in absolute terms. In absolute terms it may be a smidgen, to use a word that was brought up earlier. It may be not very much in terms of what we would expect in our own country. But it may be significant, even though very small, in terms of a particular country.

And here is where the evaluation comes in and here is the difficulty I think everyone would have with—not with the intent of the certification process or even the language—but the application of those terms. I mean, we would like to state our principles very clearly, but they involve estimates that go beyond a 6-month period or a 1-year period to say whether we see progress is being made. It is very difficult to slice time off like salami slices and feel that it allows estimates adequate to our own judgment.

Senator DODD. Let me turn to Mr. Halperin. And I see that my time has expired. They will have to wrap up, and we have a vote on as well.

What do you want to do, Senator Kassebaum? Do you want to go ahead?

Senator KASSEBAUM [presiding]. There is another panel of witnesses that is waiting very patiently.

Senator DODD. I am all through, if they would like to respond.

Senator KASSEBAUM. I just have one comment to wrap it up.

Senator DODD. Well, let's get the views of the panel members and then we can go vote and come back for the next panel, and Senator Kassebaum can make her comment.

Senator KASSEBAUM. I just want to make the point that I think you need to operationalize more specifically the criteria, and I think in some areas you may be able to do that with numbers. But in the land reform area the numbers are real, unlike the question of how many murders there are. In the case of human rights, the difference between being able to hold people in secret indefinitely and requiring to bring them before the judge, as the Constitution of El Salvador requires, is also easy to tell. The criteria there I think is not numbers, because when you describe numbers of political murders I think you do get into trouble. But the criteria there is whether the Constitution is restored and whether the people who are in jail are brought before a civilian magistrate and charged publicly.

I would say if we got that done in the next 6 months that would be very good progress in that area.

In the case of negotiations, it is very simple. Are they prepared to sit down and engage in unconditional discussions with the opposition forces, if they are willing to? Again, I think that is very easy.

So I think what the Congress needs to do is to condition the aid in shorter periods of time than 6 months, to specific criteria for each condition, some of which are quantitative and some of which are qualitative.

Senator DODD. Thank you.

I know we do have a vote.

Senator KASSEBAUM. I think we do need to get on to our next panel, and I certainly want to apologize on the part of all of us, because today has been very chaotic, what with Senators going back and forth to the floor. In the parts that I have heard, very good questions have been raised.

I am sorry that Professor Anderson had to leave, because the first thing that he said that struck me was the statement that land reform is dead. I do not know if anyone pursued that to find exactly what his thoughts were on the interpretation that land reform is dead.

I think some of the questions that have been raised—how we are going to determine exactly the level of aid or how we are going to

somehow design this so that it will be more precise—get to be more difficult. It is a subjective thing. It is like "beauty is in the eye of the beholder." I really do not know if we are going to make the program better by trying to define it, A, B, C, and then below that one, two, three, four.

But I think all of this discussion has been very beneficial in trying to sort through a very complicated question and a very important one.

Thank you all very much. Unless there are any further questions, I think we will proceed with the next panel when we come back from our vote. Thank you, and thank you for your patience.

[Recess.]

The CHAIRMAN [presiding]. Our second panel will be a public panel which will consist of Michael Donovan, brother of Jean Donovan; and William Ford of the New Jersey Inter-Religious Task Force on El Salvador, and he is the brother of Ita Ford.

And let me announce for just a moment, since Senator Pell would like to be here to hear your opening comments. We will try to find out just how far away he might be.

[Pause.]

The CHAIRMAN. I think we had better get going and continue. I do not know where Senator Pell is.

Mr. Ford, we are pleased to have you here.

And we are pleased to have you, Mr. Donovan. Suppose we proceed alphabetically.

STATEMENT OF MICHAEL R. DONOVAN, DANBURY, CONN.

Mr. DONOVAN. The Presidential certification issued on July 28 states:

> **Five suspects were dismissed from the national guard and placed under arrest on February 8, 1982. A sixth man who had previously left the national guard was arrested at the same time. On February 10 jurisdiction over the six men was transferred to civilian Judge Bernardo Rauda Murcia. The national guard delivered to the court its report on the investigation of the case as well as physical evidence obtained during the investigation. On February 13 Judge Rauda charged five of the six men with aggravated homicide.**

Under Salvadoran law, as explained to us by the Department of State, on February 10 when jurisdiction over the six men was transferred to Judge Rauda, the judge was required to bring an indictment against the suspects within 72 hours or to release them without recourse.

Since civilian authorities are not allowed to investigate members of the military, Judge Rauda could not have begun an independent investigation prior to their dismissal from the National Guard on February 8, and he was required to complete any investigation by February 13. For all practical purposes, the judge was forced to accept the report of the National Guard for purposes of bringing indictments against any of these men.

Further, we were told, Salvadoran law prohibits the civil authorities from investigating matters outside of the scope of the indictment document. Since the State Department has stated that the U.S. Government cannot conduct an independent investigation, and the Salvadoran Government has now precluded itself form investigating further, the National Guard has effectively closed the book on the investigation of

the involvement of its officers and officials of the Salvadoran Government.

This goes directly to the heart of the two questions which must be answered in connection with the deaths of my sister and her three companions.

These are: One, were any officers of the Salvadoran Armed Forces or officials of the Salvadoran Government involved in these killings?

And two, have all of these possibilities been completely and professionally investigated?

On Wednesday of last week we met with Assistant Secretary of State for Latin American Affairs, Thomas O. Enders, members of his staff, and a U.S. Embassy official at Mr. Enders' office.

At that meeting we were told that the State Department now has reason to suspect the direct involvement of senior officers of the security forces and officials of the Salvadoran Government.

We were told that specific information indicates that Lt. Daniel Mejia transmitted orders to Sgt. Luis Antonio Colindres Aleman, who is now under arrest, just prior to the commission of this crime by Colindres Aleman and his men.

We were told that the State Department believes that these orders instructed Colindres Aleman to carry out the murders of the four women. It was additionally revealed to us that the State Department considers it highly unlikely that the orders transmitted to Colindres Aleman by Lieutenant Mejia originated with the lieutenant. Indeed, he too was following orders from even higher levels.

Lieutenant Mejia, currently an officer with the Salvadoran National Guard, was almost certainly directly involved with the commission of this crime and the subsequent efforts to cover it up.

It was further revealed to us last Wednesday that there was a second sergeant attached to the unit to which the five men currently under arrest were assigned. This second sergeant, by his own admission, learned of the crime from Colindres Aleman on December 3, 1980.

In the week following, this second sergeant retired from the National Guard and moved to California, where he has been living ever since.

When we pointed out that the second sergeant could possibly be more involved in this crime than he would like to admit, we were told that the FBI will not release his name or location to anyone. One of Mr. Enders' staff then speculated that the FBI may now be in the position of having crossed the line from being uncooperative to that of being in obstruction of justice.

[The following letter was subsequently supplied for the record:]

DANBURY, CONN., *August 13, 1982.*

HON. CHARLES PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR PERCY: During the course of my testimony before the Committee on Foreign Relations on August 3, 1982. I stated that "One of Mr. Enders' staff then speculated that the FBI may now be in the position of having crossed the line from being uncooperative to that of being in obstruction of justice." In response to your question as to the name of the staff member who came to that conclusion, I answered that during informal discussion the statement was made to me by Mr. Smith.

In more detail: The conversation opened with my question to Mr. Smith: "Has the FBI now crossed the line from being uncooperative to that of being in obstruction of justice?" As reflected in my prepared testimony, I had interpreted Mr. Smith's response as an agreement with the premise of my question.

After further consultation with others who were present at that meeting, I now feel that Mr. Smith was merely taking note of my statement rather than agreeing or disagreeing with it.

Accordingly, I ask that this letter be included with my published testimony before your committee in order to provide a complete record.

Sincerely yours,

MICHAEL R. DONOVAN.

The CHAIRMAN. Would you give us the name of the staff member who came to that conclusion?

Mr. DONOVAN. That statement was made after the formal meeting broke up as we were discussing the matter informally with Mr. Smith. And I learned later that a similar statement was made by another staff member at the same point, and the comment was heard by a staff member of Ms. Oakar.

The CHAIRMAN. And the staff member's name is what?

Mr. DONOVAN. The staff member in Congresswoman Oakar's office, Madonna Kolbenschlag.

The CHAIRMAN. Thank you.

Mr. DONOVAN. We were further told that the investigation into this crime, as conducted by the Government of El Salvador with the assistance of the FBI and the U.S. Embassy in San Salvador, is so incomplete and inconsistent that the five men now under arrest will most likely cite this and the probable involvement of higher officials as their legal defense.

The State Department indicated to us on Wednesday that they most likely would be acquitted on that basis.

For the past 20 months Bill Ford and I have been fighting for justice for our sisters. For 20 months we have insisted that ample reason exists to suspect that senior officials of the Salvadoran military and government were directly involved in the murders of our loved ones. We have also condemned the lack of a serious investigation into these possibilities.

In testimony before the House Subcommittee on International Development, former Ambassador Robert White stated:

There has been nothing but foot-dragging on the part of the [Salvadoran] Government, and this will continue because no murders are investigated. And the reason is that if you investigate the murder of the American churchwomen, you are going to find that it was not the responsibility of four or six or eight enlisted men, but that it involved orders from responsible officers.

On April 9, 1981, I appeared before this committee to ask your help in pressing for a serious investigation. On that same day, Ambassador White told you, as he had stated many times in the past, that there had never been any serious investigation. Yet the State Department has always previously insisted that a very thorough investigation had been conducted and that the possible involvement of higher echelons has never been indicated.

Now we are told that our suspicions are correct. The Salvadoran Government and the U.S. Government has never conducted a serious investigation. Ample evidence exists to indicate the involvement of Salvadoran officers, including specifically Lt. Daniel Mejia. Yet none

of this can now be looked into because the very suspects themselves have manipulated the legal system into total paralysis.

The ultimate insult is that the various arguments which we have made will now be used to acquit the five low-level enlisted men charge in this crime.

Senators, you cannot allow this travesty to continue to run its course. While El Salvador continues to receive U.S. aid, Congress must insist that a way be found to conduct a real investigation and to prosecute those responsible. This will not happen without your help.

I have also attached to my statement supplemental remarks which I was not planning to read but which I hope can be included in the transcript.

[Mr. Donovan's prepared statement follows:]

PREPARED STATEMENT OF MICHAEL R. DONOVAN

The Presidential Certification issued on July 28 states: ". . . five suspects were dismissed from the National Guard and placed under arrest on February 8, 1982. A sixth man who had previously left the National Guard was arrested at the same time. On February 10, jurisdiction over the six man was transferred to civilian Judge Bernardo Rauda Murcia. The National Guard delivered to the court its report on the investigation of the case, as well as physical evidence obtained during the investigation. On February 13, Judge Rauda charged five of the six men with aggravated homicide."

Under Salvadoran law, as explained to us by the Department of State; On February 10, when jurisdiction over the six men was transferred to Judge Rauda, the Judge was required to bring an indictment against the suspects within 72 hours, or to release them without recourse. Since civilian authorities are not allowed to investigate members of the military, Judge Ruada could not have begun an independent investigation prior to their dismissal from the National Guard on February 8, and he was required to complete any investigation by February 13. For all practical purposes, the Judge was forced to accept the report of the National Guard for purposes of bringing indictments against any of these men. Further, we were told, Salvadoran law prohibits the civil authorities from investigating matters outside of the scope of the indictment document. Since the State Department has stated that the U.S. Government can not conduct an independent investigation, and the Salvadoran Government has now precluded itself from investigating further, the National Guard has effectively closed the book on the investigation of the involvement of its officers and officials of the Salvadoran Government.

This goes directly to the heart of the two questions which must be answered in connection with the deaths of my sister and her three companions. These are: (1) were any officers of the Salvadoran armed forces, or officials of the Salvadoran Government involved in these killings? And (2) have all of these possibilities been completely and professionally investigated?

On Wednesday of last week, we met with Assistant Secretary of State for Latin American Affairs, Thomas O. Enders, members of his staff and a U.S. Embassy official, at Mr. Enders' office. At that meeting, we were told that the State Department now has reason to suspect the direct involvement of senior officers of the security forces and officials of the Salvadoran Government. We were told that specific information indicates that Lieutenant Daniel Mejia transmitted orders to Sergeant Luis Antonio Colindres Aleman, who is now under arrest, just prior to the commission of this crime by Colindres Aleman and his men. We were told that the State Department believes that these orders instructed Colindres Aleman to carry out the murders of the four women. It was additionally revealed to us that the State Department considers it highly unlikely that the orders transmitted to Colindres Aleman by Lieutenant Mejia originated with the Lieutenant; indeed, he too was following orders from even higher levels. Lieutenant Mejia, currently an officer with the Salvadoran National Guard, was almost certainly directly involved with the commission of this crime, and the subsequent efforts to cover it up. It was further revealed to us last Wednesday, that there was a second sergeant attached to the unit to which the five men currently under arrest were assigned. This second sergeant, by his own admission, learned of the crime from Colindres Aleman on December 3, 1980.

In the week following, this second sergeant retired from the National Guard, and moved to California, where he has been living ever since. When we pointed out that this second sergeant could possibly be more involved in this crime than he would like to admit, we were told that the FBI will not release his name or location to anyone. One of Mr. Enders' staff then speculated that the FBI may now be in the position of having crossed the line from being uncooperative to that of being in obstruction of justice.

We were further told that the investigation into this crime, as conducted by the Government of El Salvador, with the assistance of the FBI and the U.S. Embassy in San Salvador is so incomplete and inconsistent that the five men now under arrest will most likely cite this and the probable involvement of higher officials as their legal defense. The State Department indicated to us, on Wednesday, that they would most likely be acquitted on that basis.

For the past twenty months, Bill Ford and I have been fishing for justice for our sisters. For twenty months we have insisted that ample reason exists to suspect that senior officials of the Salvadoran Military and Government were directly involved in the murders of our loved ones. We have also condemned the lack of a serious investigation into these possibilities. In testimony before the House Subcommittee on International Development, former Ambassador Robert White stated "There has been nothing but footdragging on the part of the (Salvadoran) government. And this will continue, because no murders are investigated. And the reason is that if you investigate the murder of the American churchwomen, you are going to find that it was not the responsibility of four or six or eight enlisted men, but that it involved orders from responsible officers." On April 9, 1981, I appeared before this committee to ask your help in pressing for a serious investigation. On that same day, Ambassador White told you, as he had stated many times in the past that there had never been any serious investigation. Yet, the State Department has always previously insisted that a very thorough investigation had been conducted, and that the possible involvement of higher echelons had never been indicated.

Now we are told that our suspicions are correct. The Salvadoran Government and the U.S. Government have never conducted a serious investigation. Ample evidence exists to indicate the involvement of Salvadoran officers, including specifically Lieutenant Daniel Mejia. Yet none of this can now be looked into because the very suspects themselves have manipulated the legal system into total paralisis. The ultimate insult is that the very arguments which we have made will now be used to acquit the five low level enlisted men charged in this crime.

Senators, you can not allow this travesty to continue to run its course. While El Salvador continues to receive U.S. aid, the Congress must insist that a way be found to conduct a real investigation and to prosecute those responsible. This will not happen without your help.

The following is a summary of specific points of disagreement between the facts, as I know them, and the official version of the investigation as it has been presented to me. This summary was prepared prior to meeting with Assistant Secretary of State for Latin American Affairs, Thomas O. Enders. That meeting took place on Wednesday, July 28, 1982.

I. THE OFFICIAL VERSION

On February 17, 1982, I met with Assistant Secretary Thomas Enders in his office, together with representatives of the families of the other women who were murdered. At that meeting, Mr. Enders presented to us, the State Department's version of murder of my sister:

First, the murder was committed by five national guardsmen; a sub-sergeant, Luis Antonio, Colindres Aleman, and four privates.

Second, the five were acting entirely on their own initiative, without direction, supervision, or even encouragement from their superiors.

Third, the motive for the murder was that the guardsmen suspected the women of possibly being subversive, because they (Jean and Dorothy) carried large handbags, which could conceal weapons or explosives.

Fourth, the men who perpetrated the murder were the only ones to cover-up what they had done.

II. INCONSISTENCIES IN THE STATE DEPARTMENT VERSION

From all that I know, it would appear that the five guardsmen currently under arrest, are indeed the perpetrators of the crime. I am not convinced that they were the only perpetrators, however.

The other guardsmen on duty at the airport on the night of December 2, 1980, testified that the five guardsmen currently under arrest were dressed in civilian clothes, but carried their government issue G–3 rifles, and no other firearms. Father John Spain of Maryknoll, was the only American present in the examining room when the Salvadoran medical examiner examined the four bodies. According to John Spain, the wounds of Jean and Dorothy were quite different from the wounds of Ita and Maura. John told us that he remarked about this to the doctor, who told him that Jean and Dorothy's wounds were typical of the government issue G–3 rifle, while the much smaller wounds of Ita and Maura were typical of a .22 caliber pistol. Later, according to John, when the doctor examined the backs of the heads of Ita and Maura, he told John that the murder weapon had in fact been a .22 magnum. When John asked the doctor what the significance of a .22 magnum was, the doctor replied that the "death squad" uses .22 magnum, and for that reason, he would not be indicating in his report what type of weapon was used.

The second point made by Mr. Enders, that the five guardsmen were acting entirely on their own intiative without influence from their superiors, is even more suspect.

From the statements of Carlos Paredes, a former Salvadoran government minister, we know that one month before their murders, the Maryknoll nuns were violently denounced at the Presidential palace by General Jose Garcia, the head of the army. It is not unreasonable to assume that this may be directly connected to the events of December 2, 1980. In a letter to me last week, Mr. L. Craig Johnstone, of the State Department, indicated that the Department is trying to locate Mr. Paredes ". . . who we believe to be living in Mexico." Why do they wait twenty months? I have spoken to Mr. Paredes on several occasions, merely by calling him on the telephone—yet the Government of the United States claims that it can not find this man!

On several occasions, during the month before her death, Jean was followed by a helicopter, as she rode her motorbike on a mountain road. Jean reported that the helicopter followed her for several hours at a time, at tree top level. Ita Ford also reported being followed by a helicopter during this period. All of us who have followed the situation in El Salvador know how few helicopters that country has, and how important that government considers these helicopters to be. Accordingly, the use of such a rare and valuable resource must be controlled only at the highest levels of authority. The use of the helicopters in this case indicates the gravity with which those in authority held the contemplation of the murder of American citizens. They were quite willing to commit extensive resources to an effort to find a justification for the murder of these women, correctly anticipating the serious repercussions of such an action. Such decisions could not possibly have been made at the level of enlisted men, or even at the level of junior officers.

A sign was posted on the door of the house where Ita Ford and Maura Clarke lived in Chalatanango, which warned that all who live here will be killed. Even in a country so violent as El Salvador, it is highly unlikely that such threat would be received on the day of one's murder from a source unconnected with the murder, yet the State Department's explanation is unable to explain these coincidences.

Former U.S. Ambassador Robert White has testified that one of his contacts intercepted a military radio message which said "she's not on the first flight, we'll have to wait for the next one." Mr. White stated that the message was clearly referring to Ita Ford. This is totally inconsistent with the State Department's official explanation of the crime. Ita Ford was still out of the country during the afternoon when the guardsman saw the women in the airport building. Also, the women were supposedly "two white women . . . who apparently were not Salvadoran Nationals"; which would indicate that the murderer's were not aware of the exact identities of their victims. Yet, the radio message clearly referred to the fact that Ita Ford's scheduled flight was overbooked, and that she had to take a later plane.

Sister Maria Rickelman, of the Marykroll order, was on board the plane which brought Ita Ford and Maura Clarke to El Salvador on December 2, 1980. Maria was remaining on the plane for the continuation of the flight to Miami. During the layover in San Salvador, national guardsmen boarded the plane, and questioned Maria about her identity. The national guardmen were looking for Ita Ford! This incident, together with the intercepted military radio traffic, clearly indicates a serious and organized effort on the part of the Salvadoran National

Guard to locate Ita Ford in the hours prior to her death. If the guardsmen were looking for Ita Ford for a reason other than to kill her, it is extremely unlikely that she would be able to elude their search, then enter a van which is then stopped by the National Guard for totally unrelated reasons, and finally be killed by the national guardsmen who are supposed to be looking for her. Through all of the five hours from the kidnapping of the women and their van until the final killings, the five guardsmen did not recognize that the object of their search was the woman they were murdering. Yet, this is what Mr. Enders would have all of us believe. It is far more probable that the national guardsmen were searching for Ita Ford for the purpose of killing her, she did not elude their search, and they accomplished their task.

On page 27 of the testimony provided to us by the State Department, witness Vidal Cruz Piche, a national guardsman testified that guardsman Daniel Canales Ramirez, one of those accused in this crime, had five thousand dollars during the days immediately following the murders. On page 31 of the testimony Jose Luis Monterrosa, a national guardsman, testified that sub sergeant Colindres Aleman "appeared with lots of money, and purchased luxury goods . . ." The testimony goes on to state that Colindres Aleman obtained a television set, living room furniture and a tape recorder. He also stated that Canales Ramirez had $5,000. At our meeting of February 17, 1982, I pointed out to Secretary Enders that the $5,000 in the possession of Canales Ramirez, and an unknown but substantial sum of money in the possession of Colindres Aleman were inconsistent with a theory that these men acted alone. On the contrary, the money would indicate that the men were acting on orders from higher authorities, and that they were well paid for following orders. Mr. Enders replied to me that the investigators have not found any connection between the cash and any other aspect of this case. I submitted then, and I submit now that their can be no other explanation than a pay off. These men were totally incapable of performing any service for which they would be so compensated, other than murder.

We have since learned, from the State Department, that a second sergeant was attached to the unit from which the five arrested guardsmen came. This second sergeant has stated to the FBI that he knew of the crime from Colindres Aleman within twenty four hours of its commission. This sergeant claims that Colindres Aleman sought to enlist his help in covering up the crime. The sergeant retired from the National Guard one week later, and moved to California where he has been living ever since, under the protection of the FBI. With his retirement and relocation to the United States coming so close to this crime, it is logical to suspect that this sergeant may well have received a windfall similar to the $5,000 received by each of the arrested guardsmen. The refusal of the FBI to question the sergeant on this point, and its further refusal to allow anyone else access to this man constitutes an obstruction of justice by the FBI.

On the day after the murders, the home of Jean and Dorothy was ransacked by persons unknown. The items taken, however, were not of the type that would interest the average thief; they were diaries and letters written by my sister. Further indication that she was eliminated for reasons of policy rather that reasons of lust or greed.

The third point made by Mr. Enders is that the motive for the murders were the suspicions of the guardsmen who initially saw Jean and Dorothy in the airport baggage claim area.

Corporal Perez Nieto testified that he had seen Jean and Dorothy in the airport terminal earlier in the day, and had reported to Colindres Aleman that ". . . he considered their manner suspicious because he noticed they might also be carrying firearms in their handbags." In a letter to me dated April 20, 1982, Mr. Enders states "Colindres Aleman ordered the murders . . . he acted on the basis of suspicions generated by the national guardsman who initially spotted the churchwomen at the airport." Clearly, then, the State Department is relying on this testimony of Perez Nieto for its theory of motive. In that same testimony, Perez Nieto stated that he identified Jean and Dorothy to Colindres Aleman over the telephone, as ". . . two white women . . . who apparently were not Salvadoran Nationals." Clearly then, Colindres Aleman was aware that the women were not Salvadoran (and probably American).

Several of the guardsmen on duty that night testified that upon returning to the barracks on the night of December 2, 1980, Colindres Aleman referred to the women as "subversive nuns." Since none of the women were dressed as nuns, nor did they have nuns habits among their belongings, Colindres Aleman would not have known that any of the women were nuns. Colindres Aleman's knowledge that

the women were nuns is inconsistent with the State Department's large handbag theory in that his knowledge of the women was supposed to be entirely from their physical appearance.

A period of five hours passed between the capture of the women at the airport at dusk, and the fatal gun shots which were heard at about 11:30 PM. What happened during this five hour period? Mr. Enders told us, at our February 17 meeting that most of this time was spent in the town of Zacatecoluca, the site of the regional National Guard headquarters. According to Mr. Enders, the five national guardsmen went into and out of the regional headquarters at various times, but they never took the women inside. The women, according to Mr. Enders, were kept outside in the parked van. It seems far more likely that the women were taken into the regional headquarters for interrogation. The guardsmen would not have spent so many hours within walking distance of their superiors, while hiding from them the fact that four American women were in their custody. Had they sought to hide this from their superiors, they would have avoided Zacatecoluca, if possible. They would have remained there for a minimum length of time—far less than four hours—had it been impossible to avoid going to the headquarters! A more reasonable explanation is that those in command at the regional headquarters were directing the activities of these five men on the night of December 2, 1980.

III. UNANSWERED QUESTIONS

There are a number of questions which I feel should have been answered by any competent investigator. In this case, however, most of these questions have never been asked:

1. What were the orders under which Perez Nieto was operating on the afternoon of December 2, 1980, which caused him to become concerned about the size of women's handbags?
2. When Jean and Dorothy left the national airport the first time, was their van searched. If so, what was found? If not, why not—especially given the suspicions reported by guardsman Perez Nieto?
3. Who broadcast the radio message, and why? Who was the intended recipient of the message. Who was monitoring arriving passengers at the airport, and why? What were his orders that day? Where are the military transmitters located at the airport? Who has access to them? Who has custody of them?
4. Who were the national guardsmen who boarded the plane? What were their orders? Why were they looking for Ita Ford? How often do national guardsmen board international flights?
5. Was it common for the gate guards to control traffic so as to isolate one vehicle on the exit road? How often is this done?
6. What officers were on duty, on the night of December 2, 1980, at the regional headquarters? To whom does each of these officers report? What were their orders on that night?
7. Where did the guardsmen get the large sums of money? Who paid the money?
8. Why did General Garcia denounce the nuns at the presidential palace? Who was present at the palace on that day—especially who from the National Guard?
9. Why has the FBI laboratory not determined the source of the red paint smear on the side of the women's van? What pressures have been brought to bear on the FBI, in this case, which would influence them to do less than a professional job?
10. Why have only six of 85 original suspects, on duty that night been checked for fingerprints? Why have two of the five men now held on charges not been fingerprinted?
11. Why have only six of 85 guardsmen's weapons been test fired for ballistics tests?
12. Why has Hans Christ—presently living in Miami—not been questioned concerning this case? Why has the Lieutenant, to whom the accused men reported, not been questioned in this investigation? Why has the other sergeant attached to this unit—who now lives in the United States—never been questioned?
13. Why has the FBI never questioned Maria Rickelman, John Spain, Christine Rody (Jean and Dorothy's roommate), or Carlos Paredes?
14. Why has no attempt been made to determine the identity of the fingerprints found on the sign attached to the home of the Maryknoll Sisters?

15. Why has our government withheld facts from the families of the women who were slain? How can these documents impact on national security, unless they indicate the involvement of officials of the Salvadoran Government? Why does our government continually make public statements, concerning this case, which they know to be incorrect and misleading?

The CHAIRMAN. Thank you very much indeed.

Mr. Ford.

STATEMENT OF WILLIAM P. FORD, NEW JERSEY INTER-RELIGIOUS TASK FORCE ON EL SALVADOR, UPPER MONTCLAIR, N.J.

Mr. FORD. Senator Percy, thank you very much for the invitation to come to speak to you here today. As you know, I am Ita Ford's brother. I am a trial lawyer from New York, and I am a member of the New Jersey Inter-Religious Task Force on El Salvador. I think it might be helpful, Mr. Chairman, just to put into perspective for a few seconds who these women were and what they were doing.

The four women, the four American missionaries, were employees of the Archdiocese of San Salvador. They were not off on their own. They were not, as some people have suggested here, meddling into other people's business. They came to Salvador for their own reasons, to follow the Gospel imperative. And they were assigned specific tasks by the Archdiocese of San Salvador. And, in fact, they were paid. My sister was paid $20 a month for running a refugee camp.

But I think it is important to understand that these women were not only doing traditional missionary work, but they were acting at the specific request, doing specific jobs of the Archdiocese in San Salvador.

Who sees these women as a menace? Who would suggest to you or to me or to anybody that their deaths are somehow justified or what we should come to expect?

Well, my sister was told a number of times by colonels in the Salvadoran Army that the religious of the Catholic Church and the religious of the various Protestant organizations are somehow subversive to the extent that they have made a commitment to work with the poor, to feed the poor, to bind their wounds, and to try to bring them shelter.

So it was clear, or seems clear to me, that in some perverted minds these women who perhaps took too seriously the mandates of the Gospel and found themselves in Salvador were seen as a danger by some people.

What concerns me, Senator, is, as I tried to press the State Department in this investigation, is that my sister and the other three women were seen as a menace, were seen as a danger by the very people into whose hands we are trying to press dollars.

The families are told—and we have a flurry of activity perhaps every 6 months—we had a meeting last week at the State Department attended very briefly by Secretary Enders and members of his staff and with a lawyer from Salvador, and we were given an oral presentation about the case. The oral presentation was taken word for word from a document that was handed to us 6 months previously.

I asked this gentleman from Salvador—whose identity and the fact of his existence we were asked not to talk about, but since Secretary

Enders mentioned him this morning, I do—I asked this man, who was running the investigation for the American Embassy what has been done in the past 6 months by way of an investigation. And he said, "Nothing. There has been no investigation in Salvador since immediately prior to the last investigation."

And there was no bones about that. There was no equivocating. There has been no investigation. What has been done is to essentially move a pile of blocks from one side of the room to the other. In this bizarre legal code, as described to us, in El Salvador they have to take information previously developed and transform it into legally admissible evidence.

So that is what has been going on for the past 6 months. We asked, what about the indications that the families have discussed with the State Department and written to Members of the Congress about, the indications that the deaths of these women was planned, ordered, and paid for not by five enlisted men, but by senior Salvadoran authorities. There has been no investigation.

The commission which conducted the investigation in Salvador is closed. Yet it was made clear to us that the investigation was incomplete. It was further suggested to the families that given the state of Salvadoran justice and legal system, if we wanted to assure a conviction and the evidence against the five is good, confessions, eyewitnesses, lie detector tests, we should hire a private lawyer, at very substantial expense. And yet that private lawyer would not conduct an investigation. He would only aid in the efficient presentation of the evidence already in hand.

So what are the families faced with, Mr. Chairman? There will be no real investigation conducted down there. I am sorry to say that our Government is looking for a trial of the five and then to just forget the issue. But the families are determined that this will not be forgotten. We want to find out what happened to our sisters.

We ask that this committee see that the commission in Salvador which conducted the investigation be reconvened and that a real investigation take place instead of these meetings at the State Department where we are given various signs and portents to analyze over and to worry about, but yet we are not given a real investigation, Mr. Chairman.

So we are here today to ask for your help. Once again I thank you very much for the kind invitation and the time you have taken to listen to us.

[Mr. Ford's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM P. FORD

I am the brother of Ita Ford, one of the four American Churchwomen murdered in El Salvador on December 2, 1980.

This is the Second Certification made by the President pursuant to the International Security and Development Cooperation Act of 1981. After the first Certification, made on January 28, 1982, members of the families testified before this Committee and before the Committee on Foreign Affairs of the House of Representatives, that there was no progress in finding and bringing to justice the people who ordered and directed this terrible crime. The second Certification has been submitted to the Congress and, for the families of the four murdered Churchwomen, nothing has changed.

The families of the four women met last week, on Wednesday, July 28, with Assistant Secretary Enders and members of his staff at the State Department, to get information about the progress of the case against the five detained national

guardsmen in El Salvador. The State Department personnel are still eager to convince the families that the murder had been done by five men acting alone, on the orders of one of them, a sub-sergeant. Even though the families were called to the meeting at the State Department after having been told that State had new information, there was no new information given to us. At the meeing with Ambassador Enders and members of his staff, the families listened to an oral presentation about the case, taken virtually word for word, from a written document given to us 6 months ago. The families were specifically told that there has been no investigation at all conducted in the past 6 months. There is only a shuffling of papers and information, to change the previously gathered facts about the five guardsmen in to legally admissible evidence. But there is no investigation going on.

The State Department personnel who briefed us told us there were leads which have not and likely would not be followed. The "Commission" which investigated the crime for a time in Salvador has been disbanded. There is no effort being made by authorities in either the United States or El Salvador to continue the investigation. The families have forwarded information to the State Department which, after a period of more than 20 months, still has not been checked out. For example:

(a) No effects have been made to locate the people who delivered, to the Sacristan of the church in Charltenango on the day before Ita Ford and Maura Clark were murdered, the prediction that they would be murdered the next day.

(b) No effort has been made to locate, much less interview, the troups who boarded aircraft at the airport in El Salvador to question Maryknoll Sister Maria Rickleman, presumably to determine whether she was either Ita Ford or Maura Clark.

(c) No effort has been made to interview the crews manning the helicopters which followed Jean Donovan during the months before her death.

(d) No effort has been made to interview the Colonel of the Charltenango Province, who told Ita Ford that the Catholic church religious working with poor were subversives.

(e) Ballistics information and all the fingerprints of the National Guardsmen and Security Personnel working the airport are still uncollected, despite a specific promise by an FBI representative made 14 months ago to the families that those fingerprints had been collected and were in the mail.

(f) The immediate commanding officer of Sub-Sergeant Aleman, the man who allegedly alone ordered the murders, has never been interviewed or interrogated.

The meeting attended by the families at the State Department on July 28 was most disappointing. The State Department personnel not only admitted that there had been no investigation into the participation of others in this crime, but it was clear from what they said that there would never be such an investigation by the Government of El Salvador. The State Department personnel stressed their belief that only the five men were guilty, but they could not or would not explain why the investigations were not complete. (A letter to Ambassador Enders about the July 28 meeting is attached to this statement.)

At the July 28 meeting, we were told that a trial of these five National Guardsmen may in fact take place in the next few months. The evidence against these five men, says State includes confessions, lie detector tests and witnesses. Yet, we were told that the judicial process is in such a sorry state in Salvador that, unless the families themselves hired a private attorney to assist the prosecutor of the case, a conviction of the five is uncertain. We were urged to hire a private lawyer yet, we were specifically told that this private lawyer would not conduct any investigation into participation of others in the crime. A private lawyer would only help in the presentation of the evidence against the five presently arrested. State said if the families want a complete investigation, they will have to hire their own private investigator.

The United States Government has sent millions of dollars to this and prior governments in El Salvador. Yet, we seem unable to convey to the Salvadorans that the American people are entitled to, and demand, a thorough and honest investigation into all aspects of the murder of these four American missionaries. At the very least, the investigation in Salvador should be reopened and that investigation should be monitored by the Congress of the United States. It is absolutely senseless to pour millions of dollars into the pocket of a government which will not conduct an investigation into the murders of American citizens in El Salvador. The reasons for this cover-up by the Salvadorans should not be hard to guess.

The families of the women do not want to see this matter end with a Salvadoran coverup and whitewash, and we need the help of the Congress to be sure this does not happen.

Thank you.

UPPER MONTCLAIR, N.J., *July 30, 1982.*

Ambassador THOMAS O. ENDERS,
Assistant Secretary of State for Inter American Affairs, Department of State, Washington, D.C.

DEAR MR. AMBASSADOR: On Wednesday of this week, July 28, 1982, the families of the four American churchwomen murdered in El Salvador in December of 1980 met with you and members of your staff to learn about the investigation being conducted in El Salvador and about the status of the case against the five detained National Guardsmen.

I was disturbed to be told by the State Department that there has been no investigation for at least six months and no further investigations are contemplated. It was disturbing to be told that when the investigation was stopped it was incomplete. The leads to the involvement of higher officials, that the famiiles have discussed with State at such great length, have not been followed. It is incredible that the immediate commanding officer of the man charged with the crime, has never been interviewed, interrogated or subjected to a lie detector test. It is incredible that there has been no effort to locate and interview the soldiers who boarded other planes in the airport that night to question Sister Maria Rickleman, presumably on the whereabouts of Ita Ford and Maura Clark.

The families were told at the July 28 meeting, that to the extent anything has been done in the past six months, it has only been spent reprocessing the evidence against the five enlisted men to make the evidence admissible, pursuant to the bizarre Salvadoran criminal code. Yet even with lengthy redoing of the investigation against the five enlisted men, we were told that there is a greater risk that these five men will never be convicted because of the problems of the Salvadoran justice system. The families were urged by State to hire their own private lawyer, at great cost, just to provide assistance to the prosecutor in Salvador. We were even told that this expensive private lawyer would not undertake any independent investigation, but would just do a better job of presenting the evidence currently available against the five guardsmen.

The investigation into the death of these women must be reopened, done right and completed. The "Commission" in Salvador which investigated this matter must be reconstituted with directions to conduct a real investigation. It is impossible to understand why the State Department would press millions of dollars into the hands of the Salvadoran government and yet be reluctant to insist on a complete and vigorous investigation into these murders. The United States has means and the influence to get a complete investigation. It is up to the State Department to insist that this be done.

Very truly yours,

WILLIAM P. FORD.

The CHAIRMAN. I want to thank both of you for being here. You have both turned to this committee for help. I can walk in the shoes that you are walking in now with the murder of our own daugher. My wife and I and our entire family went through years of pursuing that. But it was in this country, in our own village. We were offered every conceivable help by our own village police, the Chicago crime detection laboratories, and the FBI, because it involved tracing 1,400 leads, some of which were overseas. And it is a long, tortuous and hard path. And you just do not want not to have justice done in this case.

But in your own case it is far more complicated and difficult. We are dealing with a foreign government, a justice system that lacks a great deal. I have talked personally to a man for whom I have a very high regard, Judge Webster, through the early stages of this when the FBI was brought into this. I will go back to him on the basis of this testimony.

This testimony shocks me. Perhaps you saw the film "Missing." I saw it in Washington and was startled. I had no idea that I would be mentioned in that film, because that story touched me very deeply when a father wrote to me and said he could not get cooperation and did not feel that his Government was standing with him in trying to find his son who was missing.

We did become very actively involved in that case. I can assure you that I will do everything I personally can. I know that my colleagues will back me up to the full. I will discuss this before the week is over personally with Secretary Shultz and will ask that he bring himself up to date, and I will send word over that I will discuss it with him. I think we are meeting with him Friday morning. And we will also call Judge Clark again to see what we can do and to see that they personally read this testimony of yours.

I wonder if there are differences in perception that either of you have as to the involvements of higher-ups. Mr. Donovan, you are convinced that higher-ups are involved.

Mr. Ford, would you comment on that aspect of Mr. Donovan's testimony, as to the degree or lack of conviction that you have in respect to that one question?

Mr. FORD. Mr. Chairman, I do not think that there is a real difference. What we are coping with is a sense of frustration in getting information. I was shocked to be told by the State Department on July 28 that there has been no investigation.

Now, at that meeting, we met with—there was included there the legal person or a lawyer from Salvador. Now, we were asked after the meeting not to discuss this, but Mr. Enders has. This man gave us, if you will, the State Department position that it was a crime committed by the five men. In answer to a number of very specific questions, among them, has the commander, as the immediate commanding officer of the sergeant charged with the crime, been polygraphed, interrogated, or even interviewed? And the answer was, "No."

We were told that there was no question that that day this lieutenant transmitted orders to Sergeant Aleman and, in fact, this lawyer from Salvador speculated he may even have transmitted an order to kill the women. But no matter what, it was these five men.

So the frustration we feel, Mr. Chairman, is that we as families ask: What happened to these women, why did it happen to them, and who fears an investigation? Why has the investigating commission in Salvador been disbanded, and yet there is no question that the investigation is incomplete? There is, sir, an effort here to control the damage, throw five enlisted men to the wolves. And this is what we are fighting against.

We get these glimmers, we get these hints. We piece together certain information from missionaries and people who have returned from there. We bring this information to the State Department, and they are essentially not interested. They have five men, they want a trial, and they want this matter over with.

There may be a difference in language, but I do not think that Mr. Donovan and I have a different perception. There is an overwhelming sense of frustration, and you well know it, sir.

The CHAIRMAN. To your knowledge, has President Magaña authorized additional investigation and review of some new witnesses? Has this aspect of the case been discussed with you at all?

Mr. FORD. No, sir. The last information that we got on July 28 was there was no investigation, there will be no investigation, if you want an investigation, go out and hire your own investigator. That is the last information that I have.

The CHAIRMAN. I asked the question of Secretary Enders this morning whether or not the families have been kept up to date and informed as to the aspects of the case. He has certainly met with the families recently.

Mr. FORD. Yes, sir, he has.

The CHAIRMAN. Has this happened since the meeting with the families?

Dr. HAYES. I do not know.

The CHAIRMAN. We will investigate that to see if there is further information that can be provided to you. What information do you believe that there is in documents that might be available to the State Department and still unavailable to you that would be important in insuring that a complete and objective investigation and prosecution be undertaken in this case? Do you have any specific leads that you can give us of things that you feel you have not seen or that have not been made available to you?

Mr. DONOVAN. The only thing that I know of is that in talking with former Ambassador Robert E. White he has indicated to me that documents which he knows to be among those not being released are of a character that would indicate the lack of a serious investigation.

The CHAIRMAN. Do you feel or have a sort of gut feeling among yourselves as to whether or not the Department has utilized the added leverage that we gave to them by incorporating this tragic occurrence in as one of the equal or coequal conditions of continuing military assistance to El Salvador? Do you feel, first of all, that it does give them added leverage?

Mr. FORD. I think it does, sir.

The CHAIRMAN. In your judgment, have they used that leverage to put adequate pressure on the Government of El Salvador, to the best of your knowledge? You have talked with them in much greater detail than any of us has.

Mr. FORD. I think if we were to pinpoint one specific, sir, it would be that there has been no protest, to our knowledge, over the fact that the investigating commission in Salvador has been disbanded in the face of a candid admission to us or a candid statement to us that the investigation is incomplete.

To give you a specific troubling instance, the families were told in March of 1981 that the fingerprints of everyone who was on duty that night and ballistics information had been collected and were being forwarded to the FBI. That information has never gotten there.

It is very difficult for us, Senator, on the outside to appear to be anything but quarrelsome. But we want an investigation. We believe that our Government, dealing with the fourth largest recipient of foreign aid in the world, should have the leverage to insist on a reconvening of the commission and having the investigation go where it may. It is not only important to these women—these women are dead—but it is important to the people whom they loved, the El Salvadoran people.

The CHAIRMAN. Have either one of you ever had any direct contacts with the Salvadoran Government?

Mr. FORD. We have from time to time talked with the Ambassador, but not really of a substantive nature. We met with Mr. Duarte last September. And we have had written communications back and forth through the Embassy, but I would say that they were not substantive, sir.

The CHAIRMAN. Do either one of you have any feeling as to what the attitude of Assembly President Robert D'Aubuisson or Defense Minister General Garcia has toward the investigation and possible prosecution of members of the armed forces?

Mr. DONOVAN. We were told at our meeting last Wednesday by the Salvadoran lawyer that the present Government of El Salvador is less inclined to move forward with this case than the prior government. I assume the prior government is the government of Mr. Duarte.

I would just like to point out one thing. In my prepared remarks when I say "the State Department believes;" or "the State Department speculated," I wrote this in accordance with our agreement with Mr. Enders that we would not disclose the existence of this Salvadoran lawyer.

When I say this in my prepared remarks, I am referring to him, but I was trying not to disclose his existence, because of this agreement that we had made. And obviously, his existence now has been revealed by Mr. Enders himself. .

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

I want to welcome Mr. Ford and Mr. Donovan here today. We have talked before in my office.

Mr. FORD. Yes, sir. And I want to thank you again for the interest you have shown in our case.

Senator PELL. You have all of my sympathy.

This morning Secretary Enders was here, and I took the liberty of reading to him that portion of your statement where it says that,

> On Wednesday of last week we met with Assistant Secretary of State Thomas Enders, members of his staff, and a U.S. Embassy official at Mr. Enders' office. At that meeting we were told that the State Department now has reason to suspect the direct involvement of senior officers of the security forces and officials of the Salvadoran Government. We were told that specific information indicates that Lieutenant Daniel Mejia transmitted orders to Sergeant Louis Antonio Colindres Aleman, who is now under arrest, just prior to the commission of this crime by Colindres Aleman and his men. We were told that the State Department believes that these orders instructed Colindres Aleman to carry out the murders of the four women.

And so forth.

There is a direct contradiction here, I am afraid, because Secretary Enders said this did not reflect what they said in his office, or what he had said to you in his office. Could you account for the difference in viewpoint, because I know you both were there.

Mr. DONOVAN. First of all Mr. Enders was present for only a short time at the beginning of the meeting, and he was not in the meeting when these remarks were made.

Second, as I just pointed out: When I say the State Department, I really mean the Salvadoran lawyer who works for the U.S. Embassy. He told us that there is a logbook in the guardpost to which Colindres Aleman was assigned. That that logbook has a specific entry in Colin-

dres' own handwriting which states that he received orders at 6 p.m. on December 2, 1980, from Lieutenant Mejia.

The rest of the statement was speculation on the part of this man. He said, we believe that these orders were to kill the women. We believe that he was transmitting these orders and did not originate these orders. And he said specifically, we do not have hard evidence to this effect. But then he also said, but we have not looked into this matter either. He said the lieutenant has never been interviewed by any investigators.

And I felt that one of the most significant aspects of all of this was that the members of Mr. Enders' staff who were present did not object to anything that this man was saying.

Now, they did not confirm what he was saying either, but in all previous meetings whenever we have suggested any possible involvement of higher officers, they had leaped right down our throats and shut us off. We have even got into shouting matches at times.

The fact that they sat there and said absolutely nothing, I took as tacit approval of what this man was saying.

Although they did indeed give us the official line to open the meeting, that the five men were involved and no higher-ups were involved, as the meeting progressed and we asked questions of this man, he presented statements to us, and they did not object. That is what I am trying to communicate here in this statement.

And that happened at the meeting, but Mr. Enders was not there.

Senator PELL. But the source was the Salvadoran lawyer and not the State Department officials, your source?

Mr. DONOVAN. No. He is a civilian employee of the U.S. Embassy who was hired by the Embassy specifically to consult with them on this case, and he evidently has been involved in this case since 1981.

Senator PELL. But he was the source, not an Embassy officer?

Mr. DONOVAN. Yes, he was the source.

Mr. FORD. Sir, if I might just make a point. It was clear to us attending that meeting that this gentleman, whose name was never told to us, was the organizing force behind the investigation of the five. He knew this 96-page document virtually word for word, and he spoke so freely about the background of the investigatory circumstances that it seemed—this is an inference on my part—that this was the man who wrote the document that was used to transmit these men to civilian authority and then, since he has done nothing since the certification, no one else has done anything either.

Now, that is an inference on my part. But he was very familiar with the background.

Senator PELL. Mr. Enders went on to say in his own testimony, or had said, that the Government now proposes that 14 additional witnesses be called, including the head of the National Guard. So maybe one of these additional witnesses would be Lieutenant Mejia, or so we would hope.

Mr. DONOVAN. We hope so, sir, but we did not know that until Mr. Enders spoke this morning.

But our concern, Senator, is what should we, as Americans, what should our Government have to fear from this investigation? Obviously, nothing.

Senator PELL. Thank you. By way of specifics, I can fully understand how frustrated you are, and I only wish that we could be of

more direct help. But by way of specifics you have pretty well outlined in your statements the areas where you believe that the Salvadoran and United States Governments could have given you greater detail.

Is there any other specific point which you want to underline where you feel that either the U.S. Government, more particularly the U.S. Government or the Salvadoran Government have fallen down?

Mr. FORD. If I could just make one point to this committee, it would be that the investigation should be reopened, the commission should be reconvened, and the leads followed to wherever they lead. The investigating commission, sir, has been disbanded, so there will be no additional investigation.

Senator PELL. You have also found fault with the cooperation you received from the FBI. I am wondering if you can enlarge on that.

Mr. DONOVAN. I was referring specifically in my oral remarks to the second sergeant who is connected with this unit to which the arrested men were also assigned. We do not know the man's name. We have been told that he is living in California, but we do not know specifically where in California. He has stated to the FBI, that on the day after the killings Colindres Aleman came to him and told him the entire story, and asked his help in covering up their involvement. He reports that, instead, he retired from the National Guard, within 1 week, and moved to California, where he has been living ever since.

Additionally, in the 96 pages of testimony there are several references by other national guardsmen attached to the airport that in the week following the killings, all of the men involved showed up with large sums of money. One man is reported to have had $5,000 in U.S. currency. Sergeant Colindres Aleman is reported in the week following to have bought an entire living room set, a color television set, a tape recorder, and an electric typewriter, and they report that the other men involved also had large sums of money.

It seems to me that if this second sergeant retired from the National Guard and moved to California in this same week, there is good reason to suspect that he also came into a large windfall. And if that is true, then he too is involved in this crime. There is no reason whatsoever that the FBI should be holding this man incommunicado.

Senator PELL. Thank you very much indeed.

Senator KASSEBAUM [presiding]. I came in late, so I will defer to Senator Dodd.

Senator DODD. Thank you.

I think you have covered an awful lot of the points. First of all, let me offer you our apologies for your having to wait all day to appear before us this afternoon. I too was struck this morning by Senator Pell's question to Secretary Enders with regard to involvement by higher ups. And yet you have been told at meetings, and I presume you were told by Mr. Enders, and I am reading your prepared testimony.

Mr. DONOVAN. No, that is not correct. As I explained earlier, Mr. Enders was not present at the meeting.

Senator DODD. I am sorry.

Mr. DONOVAN. What I had told the other Senators earlier is that there was a Salvadoran lawyer who is an employee of the U.S. Embassy who was present at the meeting and who actually conducted most of the meeting.

Senator DODD. How long has he been an employee of the U.S. Embassy?

98-270 O - 83 - 16

Mr. DONOVAN. Well, I do not know how long he has been an employee, but he has been involved in this case since 1981.

Senator DODD. Early 1981, I presume?

Mr. DONOVAN. I do not know.

Mr. FORD. We got the impression, Senator, that he was retained in November or December 1981 to prepare the report which was used to hand the men over. He was the driving force, the engine, if you will, behind the organization of the investigation.

Senator DODD. So he was hired at the time that we included the provision regarding the deaths of the four churchwomen in the certification process which was subsequently passed?

Mr. FORD. Yes.

Mr. DONOVAN. It would appear so. When we went into this meeting, we had an agreement with Mr. Enders that for the safety of this man, his existence would not be disclosed.

Senator DODD. He brought that up? He suggested that you not talk about it?

Mr. DONOVAN. Mr. Enders, yes. That was a condition for us going into the meeting.

Senator DODD. Is the man Salvadoran?

Mr. DONOVAN. The man is Salvadoran. His name was never disclosed to us. We do not know what his name is. And in preparing my remarks, when I refer to "the State Department believes" or "the State Department has speculated," in actual matter of fact, it was this Salvadoran lawyer who believed or speculated. But no one else in the meeting objected to his speculations, and I took that as tacit approval of what he was saying.

I had not intended to disclose the existence of this man, but when I was sitting in the audience this morning, Mr. Enders spoke very freely of him, so there is now obviously no reason for us not to discuss his existence.

But these remarks were prepared with the idea that I was not allowed to discuss his existence.

Senator DODD. I asked Secretary Enders this morning what would constitute progress on this issue in terms of the next certification decision. I do not know if you were here at the time. I am trying to anticipate the next go-around and to begin to see if we cannot develop some guidelines now rather than waiting until the end and being confronted with information that is questionable or data that is questionable.

He said at the time, well, we are hoping that there will be a trial date set. And, in effect, I think I specifically asked him whether or not the announcement of a trial would constitute in his mind progress. And his answer was yes. That is basically all they would have to do between now and next January when we go through this process again, and that would be enough to constitute progress.

Do either of you believe there will ever be a trial?

Mr. DONOVAN. Well, at the last certification, just before the certification in January, the State Department and indeed, I believe, General García in El Salvador, announced that a trial date would be set any day now. Now we are coming to the second certification, and and we were told at our meeting on July 28, that the setting of the trial date is imminent. This morning Mr. Enders stated that the progress for the third certification would be that when the third certification comes around, we will set a trial date.

It seems to me that they are pushing it back rather than trying to set one.

Additionally, I do not think that setting a trial date is going to actually constitute progress, because there has been no substantial investigation. And included with my prepared remarks I have written several pages of points in that regard——

Senator DODD. And I read that.

Mr. DONOVAN [continuing]. Which show inconsistent, illogical evidence of the lack of an investigation. We were specifically told by this Salvadoran lawyer on Wednesday that the investigation, the way it presently stands, is so full of holes that the court will most likely acquit these men on the basis of insufficient evidence.

Senator DODD. Let me be the devil's advocate for a second. You know, land reform and human rights and allowing people to operate generally with a free hand to achieve broader political purposes, we are talking in this case about a case of, well, now, six people that were brutally murdered. As you both said, there is nothing either of us or any of us is going to do that can change the events of December 2, 1980, or the subsequent events which cost the lives of these other people.

I am hard pressed to understand, though. I have tried to step back and say what are the advantages. I would presume that if you are going to try to deal with something that would cause some elements in the United States to be satisfied, if you will, with their performance on some things, here is something you can move on and probably deal with.

I do not know if I am articulating this as well as I would like. But I do not understand it, in fact, and maybe I am trying to be too logical about it. What is your understanding of why the Government in El Salvador is dragging its feet on this, why is our State Department refusing to put more pressure on the government down there to achieve a result? What is the logic in any of that to either of you? Do you understand what I am driving at?

Mr. DONOVAN. I think so. You are asking what is the incentive of the Government of El Salvador not to come clean on this case.

Senator DODD. Correct.

Mr. DONOVAN. I believe that there are members of the office corps who are involved. That is the only thing which to me would make sense for this coverup. They do not want to go into the business of prosecuting one or more members of the officer corps because in so doing, they would come up against the officer corps as a whole.

We know of the case where Col. Adolfo Majano, when he was a member of the junta, arrested Roberto D'Aubisson, who was at that time a major in the army, and his release from jail was demanded within 24 hours by the officer corps. And I think that they are afraid that the same thing would happen, that the officer corps would stick together, and it would result in the loss of power to the government.

Senator DODD. Is it also the fear of an unraveling of the process in the sense where you have other incidents, totally unrelated to the ones we are talking about here, where it becomes common knowledge that members of the officer corps were involved in other illegal actions that may not have been involved in assassinations or may have been, but where too many people know of the actions of others and once the process begins of revealing the behavior of one, you run the risk of having each person then sort of recriminating, in effect, and you end

up with an unraveling within the ranks themselves. Is that another argument that you have heard?

Mr. DONOVAN. I think it could very well be an argument, that there has been sufficient wrongdoing that no one dares accuse anyone else because they themselves do not have a clean house.

Senator DODD. Yes.

Mr. DONOVAN. But what we are talking about in that case is essentially the same things as the vow of silence among the members of Mafia. It amounts to the same thing. And that is not something that I feel the U.S. Government should be condoning.

Senator DODD. I do not either.

Do you want to comment on that at all, Mr. Ford, or is that your general conclusion as well?

Mr. FORD. It is. But one thing that struck me, Senator, as I listened to the testimony today is that people were talking about the numbers of human rights violations and, you know, the problems of coming up with an accurate number of human rights violations. And we are sanitizing them. I think the English-language words are "murder" and "torture." I think that we ought to be clear that we are proposing to take, in effect, more money out of my pockets and send it down to the people who murdered my sister.

Senator DODD. Well, that is the problem we have had all the way through this thing. That is why I object to the numbers game, in effect, which is what we have been playing. And anyone, it seems, who has any knowledge of the situation at all recognizes that the source of the evidence used, particularly in the human rights area, to certify that there is a "concerted effort and significant progress" are not numbers that anyone would be able to use in any other place and have them hold up, given their source.

And yet they have successfully, I am afraid, with too many other people in this country, been successful, particularly with some of our journalists, quite frankly, convincing them that progress is in the eye of the beholder and that they have ended up luring them into that game, and we really have failed to look at what is at the bottom of all of this.

I mentioned before the case of Poland. Today if we were asked to certify on the human rights situation in Poland given the fact that Lech Walesa's family now is allowed to spend a few hours with him, I guess you might call that an improvement. Walesa is still incarcerated, but now his family can visit him.

I wonder if we might suggest that on that basis we ought to certify that there is "substantial progress and a concerted effort in the human rights area" in Poland. And yet that is sort of what we are engaging in here. We show 50 less murdered people a month, or whatever the number is, and that is evidence of a clear trend in improvement of the human rights environment.

I guess maybe that is how dulled we have become to the process, that we can actually applaud that kind of behavior. There have only been 1,800 people—think of it, only 1,800 people—assassinated, executed, in 6 months in El Salvador. Not one prosecution, not one prosecution; 29 arrests among the security forces, and that is a "concerted effort and substantial progress, significant progress in human rights."

It is pretty bleak.

I gather my time has probably expired.

The CHAIRMAN [presiding]. You had better get on your way to vote.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. And better have the office telephone that you are coming. I think you are on the tail end of it.

Senator DODD. Well, you know, of course, every time I start to question witnesses, we have a vote on the floor. [General laughter.]

The CHAIRMAN. I have just tried to reach President Magaña. Apparently there is a holiday down there now, but I will keep the call in. I have not met him. He is a graduate of the University of Chicago, and we have corresponded. And I just want to obtain from him his personal pledge that he will do everything conceivable to assist in this matter.

I would, however, like to be sure that I have as much evidence as we possibly can get from you at this stage. How high up does your evidence suggest that guilt goes in this case? You have mentioned a lieutenant, and it would seem to me just illogical that General García would not be willing to sacrifice one lieutenant to get the situation under control. This has been a pressing situation. And he knows we are not going to give up on it.

Mr. DONOVAN. One of the points I have asked the State Department to look into further has to do with a problem of time on the evening of December 2. The women were picked up, to the best of my knowledge, at about 6:30 in the evening. And according to the testimony of peasants who heard the gunshots, they were killed at about 11:30 in the evening. The obvious question is, What happened during those hours? Where were they?

Initially, we were not given an answer to that question. At our February 17 meeting with Mr. Enders he stated that the men, some of the men, had gotten into the van and drove it with the women as passengers. Others remained in the national guard jeep. They proceeded to the town where the regional headquarters of the national guard is located.

The men, at various times during the course of 4 hours, went into and out of the building, made telephone calls, talked with their superiors, et cetera. But according to Mr. Enders, the women were kept in the van in the parking lot for 4 hours.

I find that very hard to believe.

I find it hard to believe that if these men were acting alone and they did not want their superiors to know that they had four American women in their custody, that they would leave the women for 4 hours in the parking lot outside their regional headquarters.

I suspect that indeed the women were taken inside the regional headquarters and were questioned there by the officers in charge. In accordance with that idea, I contacted former Ambassador White to ask of him at what level would the officers at the regional headquarters be, what rank would we expect to find in charge at that regional headquarters. He replied to me that the regional headquarters, this particular regional headquarters, was one of the largest in the country and he would suspect that the commanding officer had the rank of colonel.

Now, additionally, in the documents that have been released to us by the State Department in recent weeks, there is a cable. And I must preface this by saying that these are xeroxed copies. They have por-

tions struck out and they are fifth- or sixth-generation xeroxes, and they are extremely difficult to read. But there appears to be a reference, in one of the documents, to a Gen. Vides Casanova, being present at Zacateloluca, which I believe is where the regional headquarters is located.

This is nothing that I can confirm, and, as I said, these documents are so cryptic that it is difficult to make anything out of them. But certainly, we can conclude that there were more than junior officers present at the regional headquarters. And again, I find it hard to believe that the women remained in the parking lot for 4 hours without the knowledge of those inside the building.

The CHAIRMAN. What is the basis for your statement that Lieutenant Mejia was involved in the crime and the coverup? Could you give us further indications as to your source and the leads that you have in the case?

Mr. DONOVAN. To which are you addressing that question?

The CHAIRMAN. I cannot remember which of your statements contained that information. Was it yours, Mr. Donovan?

Mr. DONOVAN. Yes. The source of that statement is a Salvadoran lawyer who is an employee of the United States Embassy in San Salvador who was at the meeting last Wednesday at Mr. Enders' office. Mr. Enders himself was not present at the time, however, members of his staff were.

The lawyer made these statements. He explained to us that the only hard evidence he had was the logbook which stated that orders had been received but did not specify what the orders were. He speculated as to what he believed the orders were and where they came from. When he made these speculations, there was absolutely no objection by the members of Mr. Enders' staff. There was no reaction whatsoever. And in light of their previous behavior when we had made such speculations in earlier meetings, I took this silence to be tacit approval of what he was saying.

The CHAIRMAN. Was there a transcript kept, do you know, of the meetings that you had with the State Department?

Mr. DONOVAN. I was at an earlier meeting at the U.S. Mission to the United Nations in New York at which we were specifically told that the meeting was being taped. Ever since then, as I have gone into each of these meetings, I have inquired at the beginning as to whether or not the meeting was being taped. And in this particular case, I spoke with Mr. Craig Johnstone, and inquired of him whether a tape recording of the meeting was being kept, and he assured me that it was not being kept.

The CHAIRMAN. So you do not believe there are transcripts other than the one meeting you had in New York; is that right?

Mr. DONOVAN. Yes.

The CHAIRMAN. Was there anyone taking notes on the meeting that you know of?

Mr. DONOVAN. There could have been notes. But I do not believe that there was a recording. At least I was told so.

The CHAIRMAN. Do you think it would be helpful to me, if there are notes of those meetings, to review those notes and possibly review them with staff?

Mr. DONOVAN. I would be very interested to see whatever document Mr. Enders was referring to. I would be very interested to see what it says concerning the comments of this lawyer.

The CHAIRMAN. Yes. I will make such a request then.

You suggest that there should be an entirely new investigation of the case. Do you have any idea how long such an investigation might take?

Mr. DONOVAN. I do not know how long such an investigation would take. It all depends on the level of cooperation that the investigators receive from the Government of El Salvador. And I think that is totally dependent upon the amount of pressure that is put on that government by this Government. I think the investigation should at least run long enough to answer the questions which we have raised and any further questions that are raised by new information developed along that course.

Mr. White has indicated to me that the information is available, but no one has gone out to get it.

The CHAIRMAN. Would you give any suggestions as to how you might conduct the investigation differently and what you know of the previous investigation?

Mr. FORD. If I could just respond to that, Mr. Chairman. I think you are really talking about just a basic field investigation. We certainly think that the chain of command over this particular sergeant should be interviewed. We think that the fingerprints and ballistics information and the people who were on duty that night, that information should be collected. We think that the men who were at the gravesite who were so anxious to bury the women as unknowns when at least two of them had blond hair and were obviously North Americans, they should be questioned.

I think that any well-trained FBI investigator could go down there and write a manual of instructions in very short order. You know, we are not really talking about going down there and making a hydrogen bomb in El Salvador. We are talking about a commonsense field criminal investigation, and that has not been done, sir.

Mr. DONOVAN. I would just like to say on that point that Bill and I are not professional investigators, and I do not think that either of us would presume to outline how a professional investigation should be conducted. But it seems that it is obvious to anyone who reviews the facts and the details, that we have reviewed, that any reasonable man would conclude that no professional investigation has been conducted.

The CHAIRMAN. I am a member of the Permanent Investigating Subcommittee of the Senate and was ranking on that subcommittee for many years. We have certain access to highly professional investigative people who can give us an audit and conduct an audit for us internally here. But again, I just cannot conceive that the executive branch will not cooperate completely with our request that we now thoroughly look into this and reinstitute a new investigation based on what you have said today.

Do you have any concept—and again I ask these questions because you have thought about them a great deal more than I have and in greater detail—any concept as to how long it might take to bring a case reasonably to make the investigation and bring it to trial? What sort of time frame, in your judgment, are we thinking about?

Mr. FORD. I think that we are going to be faced with a difficulty to which I do not know the answer. I think that the higher the level of involvement that we find, the greater the reluctance will be. If there have been three judges assigned to a case of five men, the highest of whom is a subsergeant, it will be correspondingly more difficult to

find a judge to try a lieutenant, and then you get an inverse situation as you go up the line. It will only be if this committee maintains its pressure and its interest that we have any hope at all. That is really why we are here today, Mr. Chairman.

Mr. DONOVAN. Concerning the three judges, one other piece of information that we were given by the Salvadoran lawyer on Wednesday is that he is of the opinion that sometime within the next month or two the current judge, Judge Rauda, will also resign and that a fourth judge will have to be appointed.

The question to which I am not sure we have an adequate answer now is this: Salvadoran law requires that all of the evidence presented in the trial be prepared under the auspices of the trial judge. Judge Rauda has supposedly almost completed that task. If he resigns and a new judge is appointed, does this mean that we have to start all over again with the investigation from square one and reproduce all the evidence once again? That question, I do not think, was adequately answered on Wednesday.

The CHAIRMAN. Mr. Donovan, in your testimony you suggest, and I will quote directly, "The very suspects themselves have manipulated the legal system into total paralysis." Would you expand a little on what you meant by that statement?

Mr. DONOVAN. Yes, sir. The Presidential certification, in the paragraph that deals with this case, states that the men were released from the national guard on February 8. The civil authorities, the judge and the attorney general of El Salvador, are not permitted under Salvadoran law, as it has been explained to us, to investigate crimes committed by members of the military. These can only be investigated by the military itself.

Therefore, the judge and the attorney general could not have begun an investigation prior to February 8. On February 10 jurisdiction over the six men was transferred to Judge Rauda. At that point a report was filed with the judge stating that responsible authorities—namely, the national guard—believed these men could possibly have been guilty of a crime and that sufficient evidence exists to bring an indictment.

Under Salvadoran law—and in this case this was explained to us by President Duarte—under Salvadoran law, at that point, the judge must decide within 72 hours either to indict the men or to release them without recourse. Therefore, since he could not have begun the investigation before February 8, and he had to conclude the investigation by February 13, as a practical matter, he has only one choice, and that is to accept the report of the national guard. The national guard, in my opinion, is the suspect in this case. The national guard are the ones that I wish to see investigated.

Additionally, we were told, last Wednesday, that under Salvadoran law once the judge has accepted the indictment document, he and all civil authorities in the country are precluded from investigating anything outside the scope of that document. That document was prepared by the national guard. So he and the attorney general are now precluded by law from investigating any possibilities outside the scope of that document. They can clarify anything in the document, but nothing beyond its scope.

The CHAIRMAN. My last question is addressed to both of you. Have you actually come to the conclusion that the five national guardsmen now in detention are indeed guilty of the crime charged?

Mr. DONOVAN. I believe that they are.

Mr. FORD. Yes, sir.

The CHAIRMAN. Senator Pell.

Senator PELL. I have no further questions. I support the chairman fullheartedly in pressing to follow up each one of these leads.

I do have one other query. Do you recall what other people were in the meeting with Mr. Enders after he left? You said there was a Mr. Smith. Who else was there?

Mr. DONOVAN. Mr. Johnstone.

Senator PELL. Do you have a first name?

Mr. DONOVAN. L. Craig Johnstone, Jeffery Smith, Arthur Geiss, Peter Romero. There was a woman whose name I did not get, but she is Mr. Smith's assistant.

Mr. FORD. Kelly McBride, too.

Mr. DONOVAN. Kelly McBride, Mr. Ford tells me is Mr. Smith's assistant. And I believe there were two translators. The Salvadoran lawyer spoke just broken English, and in explaining technical matters he was incapable of speaking in English. So there were two State Department translators present as well.

Senator PELL. Thank you very much.

Mr. FORD. Thank you, Senators.

The CHAIRMAN. I want to assure you that Senator Pell, Senator Dodd, and other members of the committee are deeply concerned about this. Your testimony has really helped us a great deal today and will be the cause of intense follow-through action on our part.

Mr. FORD. Thank you very much.

Mr. DONOVAN. Thank you, Mr. Chairman.

The CHAIRMAN. This hearing is adjourned.

[Additional questions and answers follow:]

STATE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR PERCY

DEPARTMENT OF STATE,
Washington, D.C., September 10, 1982.

HON. CHARLES PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: I refer to your letter of August 9 which forwards questions raised by the families during the Senate Foreign Relations Committee's hearing on the El Salvador certification. We have responded directly to the family members on many of the points raised, most recently at a July 28 meeting. The information we have on the specific points you raised in your letter are summarized below.

Listed below are the questions and excerpts from testimony covered in your letter with our comments. The questions are treated in the order covered in your letter.

Question 1. Since the last certification, there has been no active investigation by the Salvadoran Government "only a shuffling of papers and information, to change the previously gathered facts about the five guardsmen into legally admissible evidence."

Answer. The investigative commission gathered information and evidence on an informal basis. Because this commission had no legal standing, testimony had to be retaken. The trial is now in the crucial summary stage in which the considerable body of testimony and facts must be formally prepared for inclusion in the plenary stage of the trial. Salvadoran law provides for a 15-day period for taking additional testimony before the actual commencement of the jury stage of the trial. Additional testimony and evidence will be entered into the record at that time.

In addition to the preparation of the evidence, there has been other progress. The accused National Guardsmen have been discharged from military service and remanded to the custody of a civilian judge. The presiding judge has stated publicly on several occasions that he feels enough evidence has been taken to warrant setting a trial date soon. A key witness and an accomplice in the murders have confessed their parts in the crime. In addition, a number of witnesses who were not interviewed in the original investigation have been questioned recently by the presiding judge. These efforts are continuing.

Question 2. There is no effort being made by either Salvadoran or U.S. authorities to continue the investigation.

Answer. The United States and Salvadoran Governments remain committed to investigating all credible leads in the case. Both governments are probing for information that will shed more light on the crime itself. We are determined to see all those responsible for these terrible crimes come to justice. In fact, since January, the following progress has been made: the FBI has interviewed an additional witness now residing in the United States; our embassies in Mexico and El Salvador have pursued additional leads; and the Salvadoran judicial authority charged with the case has continued obtaining and taking additional testimony. We can appreciate the anguish felt by the families at the slowness of this process in a court system not founded on English common law. However, both we and the families have an interest in seeing that the process is thorough and legally correct to ensure that justice is carried out to the fullest extent.

Question 3. There were leads in the case, possibly tying Salvadoran military officers to the murders, that have not and will not likely be followed.

Answer. Both the United States and Salvadoran Governments have pursued leads in the case which might have implicated Salvadoran military officers in the murders. So far, no evidence has been developed implicating any persons other than the five accused. We will continue to pursue all such leads. The sergeant who was the immediate supervisor of accused Sub-sergeant Colindres Aleman, and who now resides in the United States, has been questioned by the FBI. The results of that questioning were sent to judicial authorities in El Salvador. The initial investigative commission questioned the lieutenant in charge of the National Guard detachment, although he was not at the airport on the night of the crime. He is scheduled to give formal testimony to the presiding judge and may have already done so. Other high ranking National Guard officers, including the Director of the Guard, General Vides Casanova, are expected to provide additional testimony to the civilian judge.

Question 4. Attempts by the families to obtain relevant documents have been frustrated by the State Department.

Answer. The Department of State is doing everything possible within the law to provide the families and their representatives with the information they have requested. The Department has released 134 Embassy and Department telegrams to the families and is currently reviewing additional documents for possible release. The review process is time consuming, due in large measure to the painstaking review of these documents necessitated by requirements of the Freedom of Information Act. The Department must insure that the release of the documents does not jeopardize the safety of sources still living in El Salvador, and does not contain information which might prejudice the trial. Of equal importance is the sensitive nature of some reporting on our bilateral relations with the Salvadoran Government. We appreciate the fact that our inability to turn over all the documents to the families contributes to their suspicions on the conduct of the case. To satisfy congressional concerns on this point we have made all the documents available to Chairman Barnes of the House Subcommittee on Inter-American Affairs. He has periodically reviewed the telegrams. As noted in congressional testimony on August 3, we are willing to make the same materials available to you, on the same conditions, in your capacity as Chairman of the Senate Foreign Relations Committee.

Question 5. Any further investigation in the case will have to be conducted by the families at their own expense, and "unless the families themselves hire a private attorney to assist the prosecutor of the case, a conviction of the five (guardsmen) is uncertain."

Answer. The Department of State has told the families several times that we are looking into either providing the funds or assisting them in finding the funds. We have also tried to be helpful in locating an *acusador particular*. It is true that the appointment of an *acusador particular* to represent the families would contribute to the effectiveness of the proceedings against those charged with the crime. It cannot be said, however, that a conviction will depend on whether an *acusador* is named.

Question 6. Why have the early threats to the lives of the nuns in Chalatenango, including: (1) the sign on the parish door; (2) the December 2 letter from Roberto Fogelbach Perez; and (3) the reported list of names of persons to be killed, not been pursued in this investigation?

Answer. The very selfless and honorable work of religious missionaries in working with the poor is viewed, lamentably, by some as a threat to the established social order. Therefore, death threats of this kind are not uncommon during these times in El Salvador. While this attitude is indicative of a society polarized by civil strife, there is nothing to suggest that this had any direct relationship to the murders on December 2, 1980. An embassy officer did, however, speak with Efrain Lopez about the threats; and the FBI did lift fingerprints from the sign posted over the parish doorway. No substantial new material evidence was provided. The Department is also aware of the threatening letter and the sign. Our embassy in San Salvador has attempted to investigate any connection between those who may have made the threats and those who murdered the churchwomen. To date, there has been no evidence linking the two events.

Question 7. Why has no effort been made to match the fingerprints lifted from the sign posted on the Parish door?

Answer. The FBI investigator lifted fingerprints from the sign for checking at the FBI laboratory. As mentioned above, the fingerprints, when combined with available evidence, could not shed any new light on the facts of the case.

Question 8. Has the individual been questioned who reported the military radio intercept at the airport on the night of December 2? Why not?

Answer. Embassy officers did speak to the individual who reported this incident. He was brought to the attention of the embassy, initially, by officials in the Salvadoran Government. His version of the reported events differed markedly from that which he had given to government officials. The embassy, therefore, desired to reinterview him for clarification of the inconsistencies in his account of the incident, and to undertake a polygraph examination. However, he has avoided all such efforts made to recontact him. The embassy is continuing these efforts.

Question 9. Why has no effort been made to question the guardsmen who boarded the plane of Sister Maria Rieckleman?

Answer. Sister Rieckleman was never directly approached by the guardsmen. The guardsmen requested the flight attendant to check the destination of all passengers. The attendant did question all passengers remaining on the flight as to their destinations, including Sister Rieckleman. It was common practice in El Salvador during that time for members of the security forces to board aircraft in transit without specific orders to do so. We have not yet been able to determine the identity of these men.

Question 10. Why did the FBI not interview in depth Sergeant Colindres' commanding officer, who apparently received a confession from Colindres? Why has Lt. Mejia, the officer in charge of the airport district, not been interviewed?

Answer. The FBI questioned Sub-sergeant Colindres Aleman's immediate superior, on February 10, 1982. He admitted that Colindres Aleman had confessed to the murders. He is available for further interviewing if necessary. Lt Daniel Mejia was questioned by the investigative commission. He has been subpoenaed to testify formally before the judge. The results of his testimony will be included in the court proceedings.

Question 11. Why hasn't the FBI analyzed the fingerprints of the area security forces so as to be in a better position to identify the 12 as-yet-unidentified fingerprints lifted from the churchwomen's van?

Answer. Fingerprints are considered secondary evidence and helpful only to further substantiate primary evidence, or to corraborate evidence pointing to those already accused. In this case thirteen individuals have been fingerprinted.

Question 12. The charges against one of the guardsmen, Rivera Franco, who originally was suspected of participating in the murders of the churchwomen, has been dismissed by the presiding judge in the case. Where is Rivera Franco now, and can you confirm that he will testify against the other guardsmen if the case comes to trial?

Answer. After the guardsmen seized the churchwomen, their van broke down. Rivera Franco stayed behind with the broken van; therefore, his statement has been taken as witness, not as an accomplice. The statement will be presented to the judge for inclusion in the trial proceedings. He is now residing in El Salvador.

Question 13. It has been reported that Hans Christ, a Salvadoran businessman who is a suspect in the January 1981 murders of two American land-reform advisors, has been living in Miami for several months. It has also been reported that

Christ was the subject of an unsuccessful extradition request by the Salvadoran Government that was dismissed this past June by the U.S. District Court in Miami. Christ was also implicated by a mysterious source known a "Cesar Cortez" as having been involved in the murders of the churchwomen.

Has the State Department or the FBI looked into these allegations? Has "Cesar Cortez" been interviewed by U.S. authorities?

Answer. We have looked into these allegations. A Salvadoran named Juan Jose Moran, now living in Mexico, told the U.S. Embassy in Mexico that a man named Cesar Cortez was a chauffeur for the Hans Christ family. Moran told the U.S. Embassy that Christ instructed Cortez to take a pickup truck, collect the Guardsmen, and go to the airport for a "job." As relayed by Moran, the "job" was the interception of the churchwomen.

The U.S. Government has attempted, both through private individuals and the police, to locate Cortez in the United States but has been unable to do so. We have serious doubts about Moran's story, particularly, since the story he relates is contradicted by other versions, including the confession. The U.S. Government attempted to question Moran in Mexico. He refused to cooperate or take a polygraph examination. Our efforts to corraborate Moran's story about his place of employment in El Salvador, and the existence of Cortez as the chauffeur for Hans Christ, met with no success. We suspect that the Moran story is a hoax.

Question 14. Has Christ been interviewed by the FBI or other Federal agents? If not, why?

Answer. Hans Christ has been interviewed by the FBI as a suspect in the January 1981 murders of the two AIFLD workers. There is no evidence implicating Christ in the murders of the churchwomen other than the dubious allegations of Moran.

Question 15. Is Christ's extradition a closed matter? Do you expect the Salvadoran Government to renew its request for extradition?

Answer. Christ could be extradited following a formal, written request submitted by the Government of El Salvador, if at any time, the investigation demonstrates his past involvement in criminal activities.

Question 16. If Christ can't be extradited, will he be deported?

Answer. Christ could be deported from the United States only if the Department of Justice finds him to be in violation of our immigration laws.

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

STATE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR DODD

THE INVOLVEMENT OF HIGHER OFFICIALS

Question 1. Archbishop Rivera y Damas, in a New York Times article of February 15, 1982, questioned (with regard to the murders of the four North American churchwomen) how "a sergeant could give orders unless beforehand, at least in general form, someone has opened the way for decisions of this nature to be taken." In this light:

What evidence exists which would lead Archbishop Rivera to make such a statement?

Answer. Without any specifics, it is difficult to determine the meaning of the Archbishop's comments with regard to this most reprehensible crime. We would not want to speculate on what might have prompted his remark. We note, however, that the evidence and testimony taken in this case suggest that one of the five accused guardsmen, sub-sergeant Colindres Aleman, in command of the others, detained the churchwomen based on a telephone call from one of the National Guardsmen on duty at the airport (Margarito Perez Nieto). Nieto apparently became suspicious of "foreign women" who arrived in a white van, and went in and out of the terminal several times. Nieto notified Colindres Aleman of his suspicions, and Colindres then took matters into his own hands.

Question 2. Have any attempts been made to link the U.S. churchwomen's deaths with the murders of other churchworkers, religious, and priests killed in El Salvador during 1980? Do you believe that there was, at the time of their (the women's) deaths, a pattern of torture and violence waged against people affiliated with the Church by the Salvadoran Government, military, or security forces?

Answer. The more secular orientation of "Liberation Theology" and the presence of hundreds of foreign clergy in El Salvador working with the country's poor, caused many on the extreme right to believe that the church and peasants were becoming highly politicized. For the last 3 years, violence and counter violence has continued to claim thousands of lives in El Salvador. However, there is no evidence to suggest that extra-legal violence, particularly against the Church, is an official or unofficial policy of the government. The situation is slowly improving, however, as the deaths attributable to political reasons have been reduced to about one-third of what they were 2 years ago. For instance, there have been no reports of any priests, religious, or churchworkers murdered in El Salvador since the U.S. churchwomen were killed in December 1980.

Question 3. Has Hans Christ ever been interviewed about his involvement in the case? If so, could we see a list of the questions he was asked? If not the NETWORK, could the families see the list of questions?

Answer. We are not aware of any evidence implicating Christ to the murders of the churchwomen other than the dubious allegations of a man named Juan Jose Moran. Moran, a Salvadoran now living in Mexico, told the U.S. Embassy in Mexico that a man named Cesar Cortez was a chauffeur for the Hans Christ family. Moran told the U.S. Embassy that Hans Christ instructed Cortez to take a pickup truck, collect the National Guardsmen, and go to the airport for a "job." As relayed by Moran, the "job" was the interception of the churchwomen. All efforts to have Moran provide more information have been unsuccessful.

Question 4. What, if any, testimony has been taken from Rivera Franco? Does his statement about the murders implicate any officials of higher rank than Sgt. Luis Colindres? Were any such questions asked of Franco when he was interviewed? If he was asked about the involvement of higher officials, was he polygraphed on this material? If Mr. Franco did not implicate any higher officials, is it possible to see the questions asked him?

Answer. Testimony has been taken from Rivera Franco. The guardsmen's vehicle broke down shortly after detaining the churchwomen. Rivera Franco stayed behind with this vehicle; therefore, his statement has been taken as a witness, not as an accomplice. His statement will be presented to the judge for inclusion in the trial proceedings, and will be part of the public record at that time. As to the question of polygraph, I must refer you to the FBI, who conducted the examination at the request of the Government of El Salvador.

Question 5. Much of the cable transmission from the U.S. Embassy in San Salvador has not been released to the families because it is listed as classified on the grounds of national security. What is in the cables pertinent to the case which have yet to be released that could possibly classify them as under the scope of national security, particularly, when former Ambassador Robert White has said publicly (in his February testimony before the Inter-American Affairs Subcommittee and as recently as July 18 in the New York Times magazine) that there is nothing in them that is a breach of our national security?

Answer. The Department has made every effort to release as many documents as possible and to provide pertinent information on the case to the families and their representatives. The Department has released approximately 150 telegrams to the families, and is currently reviewing additional documents for possible release. The documents for release must be reviewed according to the requirements of the Freedom of Information Act. We have had to withhold certain documents in order to protect confidential sources still in El Salvador, and privileged diplomatic exchanges between the two governments. The information is properly classified and must be withheld under the requirements of the Freedom of Information Act.

The Chairman of the House Subcommittee on Inter-American Affairs has seen all of the documents relating to the case, and we have offered to make the documents available to the Chairman of the Senate Foreign Relations Committee. In regard to former Ambassador Robert White's statement, we understand that he has not seen any document pertaining to the case since his resignation in February 1982.

Question 6. Given the repeated links of Cesar Cortez to the case, what is the status of the investigation concerning his involvement?

Answer. The considerable body of testimony and facts taken have not produced substantial evidence linking Cesar Cortez to the case. However, there are dubious allegations from a man named Juan Jose Moran. Moran, a Salvadoran now living in Mexico, told the U.S. Embassy in Mexico that a man named Cesar Cortez was a chauffeur for the Hans Christ family. Moran told the U.S. Embassy that Hans

Christ instructed Cortez to take a pickup truck, collect the National Guardsmen, and go to the airport for a "job." As relayed by Moran, the "job" was the interception of the churchwomen.

The U.S. Government has attempted, through both private individuals and the police, to locate Cortez in the United States but has been unable to do so. We have serious doubts about Moran's story, particularly since the story he relates is contradicted by other versions, including confessions. The U.S. Government has attempted to question Moran in Mexico. He refused to cooperate or take a polygraph examination. Our efforts to corroborate Moran's story, including verifying his place of employment in El Salvador, and the existence of Cortez as the chauffeur for Hans Christ, have not met with any success. We suspect that Moran's story is a hoax.

Question 7. Have any further investigative clues emerged since the President's first certification on El Salvador about the source of the death threats made to the churchwomen several weeks prior to their murders?

Answer. The selfless and honorable work of religious missionaries in working with the poor is viewed, lamentably, by some as a threat to the established social order. Therefore, death threats of this kind were not uncommon during that time in El Salvador. While this attitude is indicative of a society polarized by civil strife, there is nothing to suggest that this had any direct relationship to the murders on December 2, 1980. An Embassy officer did, however, speak with Efrain Lopez about the threats and the FBI did lift fingerprints from the sign posted over the parish doorway. The Department is also aware of the threatening letter and the sign. Our Embassy in San Salvador attempted to investigate any connection between those who may have made the threats and those who murdered the churchwomen. To date, there has been no evidence linking the two events.

JUDICIAL REVIEW IN EL SALVADOR

Question 8. 1981 State Department Report on El Salvador suggested: "El Salvador's judicial system does not function effectively when politically motivated crimes are brought before it, and no serious attempts have been made to use the judiciary to control the political violence." (U.S. Department of State, *Country Reports on Human Rights Practices*, El Salvador, February 2, 1981, p. 429) A report in the Washington Post on February 16, 1982, suggests that Sgt. Colindres ordered the U.S. churchwomen killed as subversives. This suggests, at least at a lower level, some political motivation for the killings.

What were the reasons that the first two judges in the case resigned? Were there any threats, was there any pressure which would have caused their premature departure from the case?

Answer. The Embassy reported that the first two judges asked to be removed from the case due to threats against their physical safety. We do not know whether any of the threats against either of the judges were actually carried out.

Question 9. What assurances can the State Department make that a trial will be held in the near future, particularly in light of General Garcia's earlier guarantees in February 1981, that a trial would be held "within a few days"?

Answer. The Salvadoran legal system is quite different from our own. It is correct to say that the trial, in the Salvadoran legal context, began last February, when the accused were discharged from the National Guard and remanded to a civilian judge for trial. At that time the judge reviewed all the evidence, which in the Salvadoran legal system is known as the investigative phase of the trial. The "plenary" phase of the trial, which includes the submission of testimony to the court, began on November 15.

The presiding judge has appointed defense attorneys for the accused ex-National Guardsman and jury selection is expected to begin about mid-December. The public trial is scheduled to commence about the second week in January 1983.

Question 10. Of the 60 homicide cases Judge Rauda, the current judge in the case, has had pending before him within the past year, none have been settled. Can the State Department give us any guarantees that if a trial is held, Judge Rauda will: (1) be able to explore all channels in the case and the investigations pertinent to it; and (2) based upon information from these investigations, be able to carry out thoroughly the administration of justice, free from threats and harassment? If the U.S. Government cannot or is unwilling to make sure assurance to the families about the resolution of these murders, how does the Reagan Administration interpret the intent of H.J. Resolution 494, which says the Pres-

ident must be convinced that the Government of El Salvador is making "good faith efforts" in the investigations?

Answer. We are hopeful that Judge Rauda will be able to explore all pertinent aspects of the case. However, as Ambassador Hinton stated with regard to the country's criminal justice system in his speech of October 29, "Are judges sufficiently protected and isolated so as to assure verdicts based neither on bribery nor fear?" Lamentably, the intimidation of judges has severely hampered the judicial process. We believe that a thorough administration of justice in this case can turn this trend around.

Question 11. What powers does the *acusador particular* have in the trial of the six guardsmen? Do his powers of prosecution differ any now from the original impressions that the victims' families had? If the State Department does not make available to this person all available information in the case, upon what data is he/she expected to build a case?

Answer. The families of the victims may have an *acusador particular* (private prosecutor) present at any and all stages of the judicial process. He is entitled to participate in every step of the case from the first declaration to the final sentencing. The *acusador particular* has a legal right of access to all evidentiary documents and to all proceedings of the trial. He works closely with the government-appointed prosecutor. The *acusador particular* is entitled to review all of the prosecutor's file before the case goes to trial and can assist the prosecutor in jury selection. The families have not yet indicated a willingness to secure the services of an *acusador particular.*

Question 12. Please respond to the analysis and conclusions of GAO's report *Applicability of Certain U.S. Laws that Pertain to U.S. Military Involvement in El Salvador, July 27, 1982 (GAO/ID-82-53).*

Answer. With respect to the discussion in the GAO Report concerning Section 9 of the Uniformed Services Pay Act of 1963 and Section 21(c) of the Arms Export Control Act, we would defer to the Department of Defense, which has responsibility within the Executive Branch for the administration of these statutory provisions.

With respect to the discussion in the GAO Report concerning the War Powers Resolution, we strongly believe that the reporting requirements of the Resolution have not been triggered by the assignment of military training personnel to El Salvador. These personnel are not now, and have not been, equipped for combat or introduced into a situation of actual or imminent hostilities. They do not accompany Salvadoran forces on combat patrols, they avoid any situation where hostilities are anticipated, and special precautions are taken to provide for their security and safety.

The GAO report seems to place special emphasis on whether helicopters provided to Salvadoran forces were armed when shipped to El Salvador. This has no relevance to the question of whether combat-equipped U.S. Forces have been introduced into El Salvador for the purposes of the War Powers Resolution. There is no requirement to file a report under the War Powers Resolution every time a weapon system designed and ready for combat use is provided to a foreign country under U.S. Security Assistance programs. Some allegations that U.S. training personnel had been "fighting side by side" with Salvadoran troops have arisen. These alleged incidents have been thoroughly investigated by the Defense Department and the U.S. Embassy. These reports were found to be without foundation. At no time were U.S. training personnel performing combat functions or in any danger of involvement in hostilities.

Question 13. The certification states that the continuing strife in El Salvador produces serious and frequent violations of basic human rights by leftist guerrillas, right-wing terrorists, and members of the government's military and security forces. Proportionately, how do you rank the level of abuses of each group cited? Is it fair to say that more than half of the known abuses are committed by government or government-controlled or directed forces?

Answer. In the vast majority of cases, it is impossible to accurately attribute civilian deaths and other acts of violence to any particular group. We can state, however, that since early 1981 the average number of civilian deaths attributable to political reasons per month has declined by two-thirds.

Question 14. Do you have evidence that the guerrillas engage in violations of human rights? If so, what is that evidence? How do these guerrillas' violations compare with government violations?

Answer. Obviously the guerrillas are responsible for at least some of the noncombatant violence deaths in El Salvador. For example, on January 31, 1982 ap-

proximately 100 guerrillas attacked the town of Nueva Trinidad, Chalatenango. After overwhelming the 15-man army garrison, the insurgents went from house to house and ordered everyone out. If the inhabitants did not open their doors, the guerrillas either broke them down and threw grenades in or they tossed grenades through windows and other openings. Witnesses estimate that 40 civilians were killed in this manner.

The guerrillas have also stopped trucks and buses, in an effort to intimidate the people, and have killed drivers and passengers. There are other types of human rights violations, however, besides murder. Guerrillas shot their way into the town of San Sabastian on December 5 and marched off at gunpoint over one-hundred soccer players and fans. The Government of El Salvador's newly-appointed Human Rights Commission is trying to secure the release of the kidnap victims. The guerrillas repeatedly threatened the Salvadoran people during the election campaign. They continue to cause extreme hardships by sabotaging the railroad system, electric towers, telephone junction boxes and bridges. While civilian deaths have frequently resulted from this terrorism, physical damage has been estimated at $100 million and is a major cause of the reduction in agricultural and industrial production. 200,000 Salvadorans have been displaced within the country because of the fighting. Several hundred thousands have left due to a 40 percent unemployment rate, caused in part by guerrilla efforts to provoke severe hardships on non-combatant civilians and to increase discontent. The guerrilla operations receive less publicity than violence directly targeted at individuals, but they are no less severe.

Question 15. To what degree is torture used by forces other than those associated with the government? Is it fair to say that almost all instances of torture are tied to political motives?

Answer. It is impossible to estimate how many people have been tortured by government or non-government groups. It is not uncommon for bodies of victims of political violence to bear the signs of torture. The use of torture to extract information or to intimidate others is a political weapon used by both extremes in El Salvador.

Question 16. It has been reported that political prisoners are tortured frequently by Salvadoran Government forces. Is this an extensive practice? What evidence supports your conclusion?

Answer. I wish to make it very clear that we condemn torture under any circumstances. Torture is cruel, repugnant and obviously defies all human rights standards. In the cases dealing with the use of torture by the Salvadoran Government which have come to our attention, we have made the strongest of approaches to the Salvadoran authorities. Torture by elements of the Salvadoran Armed Forces and by guerrilla forces has occurred, although it is not possible to establish its prevalence.

Question 17. The criminal justice system in El Salvador has been an ineffective forum for victims of human rights abuses to press for relief. Why? Is the system less effective under the present government than under the government before October 1979? What steps have been taken by the Salvadoran Government to reinvigorate the court system? What is the U.S. role in this effort?

Answer. Ambassador Hinton continues to stress the need to construct a working judicial system. Within the context of a highly polarized society, engulfed in violence, progress will be difficult.

The Salvadoran judicial system has not functioned effectively in criminal prosecutions over the last several years. Reasons for the problems include:

A history of corrupt and corruptible judges and juries;

Inexperienced and poorly trained prosecutors;

In competence at lower levels of the judicial system, particularly among justices of the peace;

Inadequate police investigations; and

Political intimidation.

Recent statistics suggest that the percentages of criminal cases resulting in convictions has not improved over the last several years.

The Salvadoran Government is well aware of the shortcomings of the judicial system. We are currently exploring ways to assist the government in improving the judicial process. The assistance may take the form of training seminars, judicial exchange programs and limited material aid.

Question 18. Do the Salvadoran Armed Forces take prisoners? If not, why? How many POWs are presently in detention in El Salvador?

Answer. Historically, the Salvadoran Armed Forces have taken very few prisoners during its counter-insurgency operations. However, this trend is changing.

During a combat operation in August, the armed forces, for the first time, disclosed the capture and humane treatment of some 2 dozen guerrillas. In a similar operation in Usulutan department in September the military again took prisoners. In December 1982, the armed forces took prisoners during combat in La Union.

Question 19. On July 3, reports appeared in the *Washington Post* that the ICRC (International Committee of the Red Cross) representative in El Salvador was threatening to leave the country because of the Salvadoran Armed Forces' unwillingness to take prisoners. On July 6, the Salvadoran press carried a statement by ICRC representative Andres Balmer denying that the ICRC was considering withdrawing. Since one of the elements of your argument that the Government is making efforts to control violence by the Salvadoran Armed Forces is based on ICRC instruction of the armed forces in the Geneva Code Conduct—

Can you explain the position of the ICRC representative in this incident?

Answer. The ICRC relationship with the Government of El Salvador is strictly confidential. We suggest the Committee direct this question directly to the ICRC in Geneva.

Question 20. How many troops are currently on active duty in El Salvador? How many have received instruction from the ICRC concerning the requirements of the Geneva convention?

Answer. According to the Armed Forces Command of El Salvador, there are approximately 19,898 active duty personnel in the Army, Navy, and Air Force, which includes combat service support units and commands as well. Further, the three security forces, the National Guard and the Treasury Police, have a total of 10,350 active duty personnel. All have been taught the Code of Conduct relevant to the service to which they belong. We continue to see progress that this instruction is taking hold and having the desired effects. It is not possible to determine the extent of ICRC instruction, since the ICRC requests strict confidentiality in its relations with foreign governments.

Question 21. Can you report any results to date of ICRC instruction?

Answer. Results in this category are hard to quantify. However, Embassy officers have seen specific instructions in operational orders for the treatment of the civilian populations and prisoners. Further, during the last month, there has been an armed forces media campaign in El Salvador to sensitize the military personnel and the general population about the necessity to observe human rights.

Question 22. Does the ICRC have full access to Salvadoran detention facilities?

Answer. According to the High Command of the Salvadoran Armed Forces, the International Commission of the Red Cross has been authorized to visit the prisons, public security force offices and military units to investigate the treatment of prisoners. Embassy sources in the military confirm that ICRC delegates can and do visit detention facilities at least once a month. ICRC access to the facilities has improved substantially in the last 6 months.

Question 23. What is the rank of the highest ranking Salvadoran officer who has been disciplined or arrested for human rights abuses?

Answer. According to the high command, the highest ranking officer being processed in the courts for human rights abuses is a lieutenant. A recently-retired ex-major is also under detention for kidnapping.

Question 24. The certification states that a series of disciplinary actions against civil defense personnel have been instituted as a result of a May 31 armed forces announcement soliciting public denunciations of "delinquent crimes." What types of abuses are the accused alleged to have committed? How have they been disciplined? Have any persons been prosecuted or convicted of criminal offenses?

Answer. The high command reports that 26 civil defense personnel have been charged with crimes of murder, rape, robbery and extortion. The accused have been turned over to the criminal courts for further investigation of their cases. They are being held in detention pending final resolution of their case.

No one has been convicted yet, according to armed forces sources. Nevertheless, the accused are being held in detention, under the authority of various investigating courts around the country, while investigations continue.

Question 25. The certification states that during the most recent certification period, 109 members of the Salvadoran Armed Forces were disciplined for various offenses.

98-270 O - 83 - 17

(a) Of this number, how many offenses involved human rights abuses?

Answer. Between January 1 and July 7, 1982, 44 military personnel were arrested for offenses involving human rights abuses. An additional 12 military personnel have been remanded to judicial authorities for offenses not involving human rights abuses.

(b) Apparently, 56 of these cases have been submitted for judicial action. How were the remaining 53 cases handled?

Answer. The remaining cases were either crimes against other members of the military or minor offenses. They were either remanded to an investigating court or handled administratively.

(c) Have any of the 56 cases gone to trial?

Answer. All of these cases are presently in various stages of investigation.

(d) Have any convictions been obtained? What is the likelihood of obtaining convictions before the next certification is required?

Answer. According to sources in the military, no convictions have been obtained. It is not possible to confirm this data without checking with every court in the country, as military responsibility ends when the accused are handed over to a civil court. Prior to remanding the accused to judicial authorities, the military discharges the accused from the service. Therefore, when the cashiered military man arrives at the court, he is considered a civilian with no further connection with the armed forces.

The likelihood of obtaining convictions before the next certification is remote. The Salvadoran Attorney General's Office recently provided us with data that indicates that of some 32,000 prisoners in the Salvadoran penal system, only about 400 have been convicted. The others are awaiting either investigation, trial, or both. This information strongly supports our contention that the criminal judicial system in El Salvador has effectively collapsed. Reform of this system should be one of the priority items of the government. The effects of years of intimidating judges and tampering with the process are not easily reversed. Resources for this effort will be scarce unless foreign assistance can be enlisted.

Question 26. Is it true that Salvadoran forces have entered refugee camps in Honduras and abducted Salvadoran refugees? How many times has this occurred? What has the response of the U.S. Government been to such reports?

Answer. We suspect that Salvadoran paramilitary and military forces have entered refugee camps in Honduras, but we have no real proof. We have received numerous reports that armed groups, both guerrillas and paramilitary, entered the refugee camps while they were situated near the border. Since the camps have been relocated, away from the border, we have had no reports of such incidents.

Question 27. Has the change in government since the election of March 28, 1982, affected control by the High Command of the various elements of the armed forces and security forces?

Answer. The elections of March 28 put a truly representative government in place in El Salvador. The legitimacy of this government and the close working relationship between President Magana and high-ranking members of the military will hopefully overcome the years of distrust and distance between military and civilian political leaders. The Political Commission, setforth under the multiparty Pact of Apaneca, includes the Minister of Defense as the military representative. The Political Commission has dealt with such issues as scheduling the next elections, appointing an independent elections commission, and will shortly begin work on reviewing amnesty, dialogue proposals and general pacification.

Since the elections, planning, coordination, and execution of government policy by civilian leaders and military officers have improved. However, the physical problems inherent in the deployment of small detachments of rural security forces and the military to remote areas of the country with little or no communication with headquarters make it difficult for the high command to maintain close control over these forces.

Question 28. News reports in early June indicated that a large number of civilians were killed during military operations. Were U.S. advisors in the area? Did the Embassy investigate the issue of civilian deaths in that battle?

Answer. The FMLN makes regular allegations of massacres after nearly every military operation. These allegations are usually echoed by sympathizers in San Salvador, such as the local human rights commission. Events in June appear to be no different. We assume the incident in question refers to a 2-week battle which took place in Morazan department. No U.S. trainers were in the area.

The embassy has no indication from its sources that large numbers of civilians died during this operation. Further, because Morazan has been the scene of much fighting over the past 2 years, the Department has been largely depopulated of civilians. Its inhabitants have become refugees either in Honduras or in more secure population centers in the interior of El Salvador. Remaining civilians are either in the towns still under government control or are part of the civilians that accompany the guerrillas, the so-called "MASA." Thus, the Embassy doubts that "large numbers of civilians were killed." We cannot discount the possibility that some civilian casualties did take place. However, it should be noted that the guerrillas, who are frequently tipped off in advance of planned military operations, have not always acted responsibly in ensuring that their civilian followers are removed from areas prior to these engagements.

Question 29. In a supplement to its Impact Audit on Land Reform in El Salvador, OXFAM America reports that "even when measured against the limited goals of the original (flawed) program, the process of agrarian reform in El Salvador is dead." OXFAM maintains the program was killed by government failure to energetically pursue implementation and by passage of Decrees 2 and 6, which eliminate the key underpinnings of the law. OXFAM argues that commitment to the land reform program would be demonstrated by (1) vigorous enactment of all three phases of land reform, (2) vigorous military support for the program along lines of the support given to expropriation of Phase I lands in 1980, and (3) elimination of corruption in the administration of the program. Would you comment on how closely present Salvadoran Government actions conform to those recommendations by OXFAM? Would you add to or delete from this list of recommendations?

Answer. Decrees 3 and 6, passed by the newly seated Constituent Assembly after the March 28 elections, were an attempt by some to derail agrarian reform. The ill-worded language in the legislation provided a "signal" to many that the continuance of the reforms was in doubt. However, President Magana with the support of Minister of Defense Garcia and a host of other political leaders, through executive decree, eliminated the legal loophole that would have denied legal redress for those evicted after elections. The Magana government, and the Duarte junta that preceded it, decided to postpone the implementation of Phase II of the reforms. The most compelling reasons were the lack of resources and manpower to launch Phase II, insufficient funds for compensation, and the severe disruptions to the already battered economy that would be caused by a possible Phase II implementation.

With respect to military support for agrarian reform, several thousand peasants, more than half of the evictees, have been restored to their land with the direct assistance of the military. The government also has instituted a major outreach program to identify the remaining evictees and restore them to their land. Agrarian reform officials and peasant promoters are working closely with military authorities to stimulate applications and titling. It is worthy of note that in October FINATA launched a major outreach program in the Department of Ahuachapan to stimulate Phase III applications. A concerted media effort resulted in 1,100 new applications during a 3-week period.

There have been allegations of corruption within the agrarian reform agencies since their inception in 1980. Since March of 1980, when Phase I of the agrarian reform began, most of these allegations have concerned the management, purchasing, and marketing processes at the farm level. Despite the frequency of these charges and the large sums of money which are alleged to be involved, there has been little real evidence to substantiate any of these allegations.

Question 30. It appears that significant numbers of titles are issued only during periods of heavy U.S. pressure on the Salvadoran Government, particularly pressure applied as the U.S. Government nears certification time. Is this assessment correct, and what mechanisms could be implemented to insure titling at a more regular pace? Should future certifications be conditioned on meeting certain goals for applications accepted and titles issued?

Answer. Significant indices of agrarian reform progress, provisional titles granted and the numbers of farmers filing petitions, do not support the contention that progress occurs only as we approach the semi-annual certification. Petitions filed were at their lowest levels in the last 2 months just prior to the July 28, 1982 certification and rose again immediately after certification. The number of Provisional titles granted declined after certification, but the government

launched a major outreach program in October to promote applications. The result was a return to previous levels.

One of the ways titling could be speeded up would be for Congress to provide money to El Salvador that would enable the government to create a counterpart fund to facilitate the compensation to owners. Almost 2 years have passed without the former owners being compensated, receiving any rents, or being able to use the lands. Although illegal evictions have all but ceased, titling procedures have been made difficult, due in large measure to uncooperative owners who fear that they will not be compensated for their land.

We believe it would be counterproductive to link specific performance on agrarian reform to established periodic levels. Rather than strengthening the hand of moderates, who are committed to the program, the establishment of specific goals could expose the program and peasant beneficiaries to physical and propaganda attacks by those extremists that would like to see the program fail. The government has repeatedly demonstrated that it has the will to continue the progress already achieved in a most ambitious land reform.

Question 31. Please describe the magnitude of peasant evictions from Phase III lands before and after the elections of March 28. If you were a peasant evicted from the land, what recourse would you have to get reinstated? How many peasants have been reinstated on Phase III lands in the past few months? How many have been re-evicted? What is the role of the military in this process? Are the evictions forced? What groups carry out the evictions?

Answer. The Government of El Salvador determined that 4,763 peasants reported being illegally evicted following the March 28 elections. President Magana, through executive decree, moved to close a legal loophole that could have left thousands of peasants evicted after the elections without legal redress to regain the land illegally taken from them. Government officials, including Minister of Defense Garcia, have re-affirmed the government's commitment to the reforms in their public remarks.

Over one half of those evicted have been restored to the land by reporting their eviction to the local agrarian reform office or the military commander. In most of these re-installations, elements of the military and security forces accompanied peasants back to the land. In the remaining eviction claims the facts surrounding the reported evictions were not as clearcut. As a result, these cases have been turned over to the civilian courts for adjudication.

It is difficult to determine the nature of the threats against peasant beneficiaries or who may have perpetrated these evictions. Data on re-evictions is not readily available since the Government of El Salvador, for statistical purposes, treats them as evictions.

Question 32. Following visits by peasant leaders to the United States in June 1982 to inform Members and staff of this Committee and others of problems in the land reform, we understand that some of those people had their lives threatened. What were the nature of those threats and what did the Salvadoran Government do to protect the peasant leaders?

Answer. The Department of State has not received any information that suggests that peasant leaders were threatened following their visit to the United States in June. Given the violence and political polarization in the country, it is entirely possible that some leaders were threatened. If the Committee could provide the names of those allegedly threatened and the nature of these threats, we would be more than willing to look into the matter.

Question 33. Is the position of the present government different from that of the previous government on the question of implementation of Phase II? What impact does abrogation of Phase II have on the overall land reform program?

Answer. The current Magana government, and the Duarte government that preceded it, have decided to postpone the implementation of Phase II. The primary reasons for this postponement are the lack of personnel to oversee the program and the severe disruption to the agriculturally-based economy that would ensue. Phase II would encompass lands which are the most productive in the country. These lands produce cash crops which provide the government with much needed hard currency, at a time of a very severe economic crisis. The 25 percent decline in GDP in the last three years is in large part due to guerrilla attacks on the infrastructure. The implementation of Phase II at this time would critically strain the already hard-pressed economy.

The postponement of Phase II does not effect the over 375,000 beneficiaries to date of Phase I and III of the land reform.

Question 34. Are the rights of those persons evicted between the date of passage of Decree 207 and the date of passage of Decree 6 guaranteed at this time? What precisely are those rights?

Answer. Yes, the rights of small farmers eligible for land under the terms of Decree 207 continue to be protected. In July, by executive decree, which carries

the force of law in El Salvador. President Magana reaffirmed the continued rights of small farmers, including those illegally evicted, whether they had made applications for titles or not.

Decree 207 allows farmers to purchase up to 17 acres of land that they had previously worked as renters or sharecroppers through 30-year government mortgages. The Salvadoran Government is responsible for compensating former owners.

Question 35. One of the criticisms of the present Salvadoran Government land reform effort is that it has named individuals who are personally opposed to the program to head the major institutions involved in land reform. Is this criticism founded on fact? How can you be confident that these people will pursue the reform aggressively? What chances are there that these individuals will be changed and replaced with persons more sympathetic to the reforms?

Answer. It is true that there were some changes within government when the new administration took office last spring. It is also true that under the arrangement to share power among the country's leading parties, several government positions are now filled by members of El Salvador's more conservative parties. Some members of the ultra-right National Republican Alliance (ARENA) hold positions in the Ministry of Agriculture and in agrarian reform institutions. On the other hand, one of the most important reform positions, the head of the organization charged with implementation of Phase III, is an army colonel who has no political affiliation.

There is no indication that the reform program is in jeopardy. All aspects of the program continue to move ahead, and problems continue to be dealt with as needed. In fact, the first final titles and payments to former owners in Phase III of the reform have taken place under the new administration. We are not aware of any plans for further changes within the leadership and staff of agrarian reform agencies.

Question 36. According to a report from Latin-Reuter News Service, the President of ISTA, the agency in charge of the Phase I land reform program, said that $30 million has been lost due to embezzlement, robbery, and corruption. Has our Embassy been aware of this problem? What actions have been taken to eliminate corruption in the land reform program?

Answer. In the first weeks after Dr. Jorge Arturo Argueta became President of ISTA, he was a frequent critic of the organization he had been named to head. We believe that Dr. Argueta, in his first days in office, was using a "new broom" approach to establish his intent to improve the operation and reputation of ISTA.

There have been allegations of corruption within ISTA both before and after the coup of October 1979. Since March of 1980, when Phase I of the agrarian reform began, most of these allegations have concerned the management, purchasing, and marketing processes at the farm level. Despite the frequency of these charges and the large sums of money which are alleged to be involved, there has been little real evidence to substantiate any of these claims of corruption. It should be noted that ISTA was ill prepared to take on the burden of Phase I at the inception of the program. Also, ISTA has not received strong leadership, skilled management, or an adequate budget in the intervening period. Nevertheless, under great difficulties, ISTA has been able to launch Phase I and to keep the program moving forward.

The American Embassy and AID Mission in El Salvador follow the agrarian reform program closely. AID provides advice and assistance to ISTA to help the organization improve its operations. Also, the Salvadoran Government has established an audit branch in ISTA to improve its ability to account for funds. Some ISTA employees have been fired for cause, and will face prosecution if there is evidence of corruption. These efforts should improve ISTA's management and image.

Question 37. One of the principal problems with the land reform is that individuals now on the land do not have access to adequate credit and supplies for planting and harvesting. What is being done to improve this situation? Why is it that the banks nationalized by the government are not able to channel credit to this critical sector of the economy?

Answer. Ensuring that there are adequate credits and agricultural supplies is indeed critical to the success of the agrarian reform program and to the country's economy. The Salvadoran Government is making a determined effort to address credit and agricultural input problems and is receiving donor assistance in this area. The Inter-American development Bank has extended a $40 million loan to

the national agricultural development bank to finance fertilizer imports and other supplies. Since 1980, AID has channeled $31.2 million through the agricultural bank for sub-loans to small farmers and rural cooperatives. AID also assists the Salvadoran extension system which provides advice on how to obtain and use credit, and how to increase production.

The Government of El Salvador is projecting $414 million in total agricultural credit for the 1982/1983 crop year. Within this figure, $127 million (31 percent) is for agrarian reform farmers, a significant increase over the previous year. For the 1981/1982 cycle, $382 million in agricultural credit was extended of which $74 million (19 percent) went to reform farmers. Banks nationalized by the banking reform are actively engaged in the rural credit program. Loans to agrarian reform farmers by nationalized banks totaled $37.6 million in 1981/1982, and are projected to reach almost $69 million in 1982/1983.

Question 38. What progress has there been in the other economic reform areas—reform of the banking and export sector? What problems do you see with these reform efforts?

Answer. All of El Salvador's commercial banks, savings and loan associations, and private lending institutions were nationalized by the March 1980 banking reform. After audits and deductions of bad debts and loans, individual compensation values were set on the basis of proportional shares of net worth. Compensation has been made in 9 percent bonds. The next step will be sales of bank stock, with 20 percent available to bank employees and 29 percent to the public. The government will retain 51 percent of stock in each bank.

State monopolies have been established for all purchases of coffee and sugar from producers, and for local and international marketing. The coffee monopoly inherited from its semi-private predecessor large debts and commitments, and administrative disarray. A private audit firm has been contracted to assist in bringing order to accounts. The monopoly's problems are compounded by low world prices, a restrictive quota from the International Coffee Organization, and a high inventory of unsold coffee. Nevertheless, the monopoly is credited with an honest and generally competent record over the past 2 years by most objective observers.

Because sugar is a basic consumption commodity within El Salvador, the sugar monopoly has subsidized production to ensure that domestic demand is met. However, because of political uncertainty, guerrilla attacks on cane fields, and adverse world prices, production and exports are down.

These reform efforts are being criticized as being less competent and responsive than when the same activities were under private or semi-private management. The present Salvadoran Government is holding discussions with private sector leaders to determine how the reforms can be improved.

Question 39. During Secretary Shultz' confirmation hearing, he indicated he had doubts about nationalization of banking as a reform measure. Does this indicate that Administration policy with respect to the Salvadoran Government's banking reform program will change?

Answer. Secretary Shultz was expressing his own personal doubts, based on lengthy banking experience, about the merits of nationalizing banks. However, the Salvadoran junta determined that the banking reform was necessary as a critical component of the land reforms. Without diversifying ownership of the banks, landed interests could have denied crucial credits to reform cooperatives and other beneficiaries.

Question 40. Approximately 60 percent of the voters in the March 28 elections supported conservative political parties whose commitment to basic reform benefitting the peasant population was questionable. How do you interpret this?

Answer. The will of the people. The parties on the right all took a strong stand on public security issues and promised the electorate that they would, if elected, redouble the war effort. This apparently had an appeal to voters who desire an end to the fear and uncertainty provoked by continuing terrorism.

Question 41. What is the relative power and influence over government policy of Assembly President Roberto d'Aubuisson, provisional President Alvaro Magana and Defense Minister Garcia?

Answer. Roberto d'Aubuisson is President of the country's legislative body, the Constituent Assembly. He is also Secretary General of the National Republican Alliance (ARENA), the party that obtained the second highest number of votes in the March 28 elections and accounts for 19 of 60 seats in the Assembly. There are some indications that D'Aubuisson's influence has suffered some setbacks.

President Alvaro Magana is a political independent who does enjoy the esteem and support of most political parties. In addition, he has the important support of the military.

Defense Minister Garcia, by virtue of his position and the ongoing civil strife that engulfs the country, has a major role in political questions that effect military concerns.

We would be happy to provide you with a more comprehensive, in-depth look into the dynamics of the Salvadoran political situation by means of a classified briefing, if you or other members of the committee so desire.

Question 42. What effort is the present Government of El Salvador making to encourage elements of the opposition FDR/FMLN to participate in the ongoing political process?

Answer. Numerous government officials have made several appeals to the guerrillas to participate in the political process through elections. Before the March elections several appeals were made, particularly to the Democratic Revolutionary Front, by President Duarte, Defense Minister Garcia and Commander-in-Chief Gutierrez, urging the guerrillas to contest the elections. General Garcia even remarked that the government would be willing to consider certain security guarantees for those that chose to run for elected office. Instead of participating, the armed left tried to disrupt elections by assassination attempts on candidates, intimidation of prospective voters, calling for a boycott and conducting armed attacks the day of elections.

Salvadoran leaders continue to publicly reiterate this call. The multiparty Pact of Apaneca provides for the establishment of a Peace Commission that will make recommendations to the president on such issues as amnesty for guerrillas, dialogue with leaders of the armed left, and general pacification. The Commission members are expected to be appointed shortly. Their work will then be reviewed by the President and other key officials of the government.

The Government of National Unity will then finalize its policy regarding these issues after a general consensus among the political parties and the leadership has been reached.

Question 43. What are the prospects that presidential elections will take place in the coming year?

Answer. Presidential elections are scheduled to take place on or before March 28, 1984.

LT. GEN. NUTTING'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. Do the Salvadoran Armed Forces take prisoners? If not, why not? How many POWs are presently in detention in El Salvador?

Answer. a. First, by way of clarification of terminology, the term "POW" is not applicable to the situation in El Salvador. Under the 1949 Geneva Convention, the term "POW" applies only to certain personnel captured in an "international armed conflict." The conflict in El Salvador is not of this category; hence, referring to captured terrorists or guerrillas as "POW's" is technically incorrect.

b. Specifically adressing the question, the Salvadoran Armed Forces and other security forces do take prisoners. The Armed Force, which until recently had not publicly announced the capture of terrorists, has in the past several months reversed this policy. There are currently 648 individuals, who have been captured or arrested for participating in terrorist actions, being held as prisoners in state prisons. The U.S. Embassy notes that most of these individuals are political prisoners, held under state of siege regulations. Most were not captured in combat, but rather in police sweeps of urban areas. However, all recent major military operations have in fact resulted in the capture and reporting of prisoners. While the number of these prisoners is not large, there are various plausible reasons advanced by both Salvadoran and U.S. sources for this phenomenon:

(1) The guerrillas have been indoctrinated to fight to the death.

(2) The guerrillas habitually carry off their wounded, or kill them to prevent capture.

(3) "Guerrillas" who surrender or turn themselves in without weapons are not classified or reported as "prisoners."

(4) Other non-combatant supporters of guerrilla forces, even those captured during combat operations, are likewise not classified or reported as "prisoners."

(5) Screening and disposition of detainees of all types are done at the tactical level, with only sporadic and incomplete reporting to higher headquarters. Thus, captured guerrillas, those who have surrendered, or supporters who agree to cooperate with the local military are often not remanded or reported.

In answer to charges that the Armed Force has in fact summarily killed captured guerrillas, we can neither verify nor totally discount this possibility, as U.S. observers are not permitted to accompany the Armed Force on operations. However, it is the firm belief of both the Embassy and my Command, based on information from a number of reliable sources, that the Armed Force's leaderhip has made a public and committed decision to eliminate such violations; and, in fact, this policy has resulted in the positive results recently publicized. Additionally, it is our belief that sensitivity to expressed concerns over this issue and the effect of our training efforts, which constantly stress both the moral and military advantages of humane treatment of prisoners, have influenced the Armed Force to value the importance of prisoners and their proper treatment.

Question 2. With respect to the International Commission of the Red Cross (ICRC):

a. Can you explain the position of the ICRC representative in this incident?

Answer. The ICRC relationship with the Government of El Salvador is strictly confidential. We suggest the Committee address this question directly to the ICRC in Geneva.

b. How many troops are currently on active duty in El Salvador? How many have received instruction from the ICRC concerning the requirements of the Geneva Convention?

Answer. With respect to the Armed Force and the number of troops currently on active duty in El Salvador, there are approximately 19,898 active duty personnel in the Army, Navy, and Air Force. Further, the three security forces (National Guard, National Police, and Treasury Police) total 10,350 active duty personnel. The Armed Force reports that 70 percent of the 30,248 active duty personnel in the military and security forces have received instruction from the Salvadoran Red Cross, using ICRC material. The remaining 30 percent will receive this instruction by the end of the year.

c. Can you report any results to date of ICRC instruction to the armed forces?

Answer. The results of this instruction are difficult to determine. However, operation orders for all recent major military operations have included specific instructions for the proper treatment of prisoners and the civilian population, as well as restrictive rules of engagement. Further, during the last month, there has been an Armed Force media campaign throughout the country to sensitize the population to the need to observe human rights.

Question 3. Does the ICRC have full access to Salvadoran detention facilities?

Answer. The Salvadoran Military High Command informs us that "members of the International Commission of the Red Cross have been authorized to visit the prisoners, public security forces, and any other military units" to investigate treatment of prisoners. According to Embassy sources, ICRC delegates can and do visit detention facilities at least once a month.

Question 4. What is the rank of the highest ranking Salvadoran officer who has been disciplined or arrested for human rights abuses?

Answer. According to the High Command, the highest ranking officer being processed in the courts for human rights abuses is a lieutenant.

Question 5. In relation to disciplinary actions against civil defense personnel:

a. What types of abuses are the accused alleged to have committed?

Answer. According to the High Command, the crimes committed by some individuals in the civil defense organization are murder, rape, robbery, and extortion, among others.

b. How have they been disciplined?

Answer. The individuals were turned over to the competent criminal court for investigation. Military responsibility for them ceases at the point they come under the investigating court's jurisdiction. They are invariably held in detention until final resolution of their case within the judicial system.

c. Have any been prosecuted or convicted of criminal offenses?

Answer. There are no data centrally available in El Salvador on convictions. Prisoners are held under the authority of various investigating courts around the country. The Director of the National Police has told us that he knows of no convictions. He also pointed out that police involvement in these cases ends

when the investigative court takes jurisdiction. Our best judgment is that none of the 26 arrested has yet been convicted. All are being prosecuted.

Question 6. Regarding the statement that during the most recent certification period, 109 members of the Salvadoran Armed Force were disciplined for various offenses:

a. Of this number, how many offenses involved human rights abuses?

Answer. Forty-four, according to information provided by the High Command.

b. Apparently, 56 of these cases have been submitted for judicial action. How were the remaining 53 cases handled?

Answer. The remaining cases were either crimes against other members of the military or minor offenses. They were either remanded to an investigating court or handled administratively.

c. Have any of the 56 cases gone to trial?

Answer. According to El Salvadoran military sources, all of these cases are either under investigation or being processed in investigative courts.

d. Have any convictions been obtained? What is the likelihood of obtaining convictions before the next certification is required?

Answer. As previously noted, these data are not available without checking with every court in the country. Military responsibility ends on handing the accused over to a court. Prior to this, the military discharges the accused from the service. Therefore, when the accused arrives at the court, he is a civilian with no further connection with the Armed Force. As to the likelihood of obtaining any convictions before the next certification, we simply don't know. The Attorney General's Office recently informed us that, of some 32,000 prisoners in the Salvadoran penitentiary system, only about 400 have been convicted. The others are awaiting either investigation or trial, or both. This information strongly supports our contention that the criminal judicial system in El Salvador has effectively collapsed. Reform of this system is one of the priorities of the provisional government. However, because of the economic crisis, resources for this effort will be scarce unless foreign assistance can be enlisted.

Question 7. If convictions aren't obtained against those elements of the military responsible for serious human rights abuses, then aren't disciplinary actions of little value? Doesn't this kind of "discipline" mock the judicial system and concern for human rights?

Answer. There is always value in seeking sanctions against those who violate the law, regardless of whether or not a conviction is obtained. In El Salvador, the prosecution of those responsible for human rights violations has at least three beneficial effects. First, since military personnel charged with human rights violations are separated from the Salvadoran Armed Force, the possibility of losing either employment or career has in itself an important deterrent quality. This is especially true in El Salvador, where there is high unemployment. Second—and more fundamental—it serves notice to all that the Salvadoran leadership will not tolerate human rights abuses. Finally, it has salutary value in that individuals suspected of human rights violations are removed from the ranks of the military and detained, thus preventing their perpetration of further offenses or untoward influence on other personnel. While justice would be better served by more expeditious movement of cases through the Salvadoran judicial system, it would be premature to form the judgment that what has occurred to date is not constructive. The Salvadoran court system is simply overburdened beyond its capacity and requires help. As long as cases are progressing in an orderly fashion towards completion—which I understand they are—justice is in fact being served, albeit slowly. I would also like to caution against judging by our own standards the timeliness with which cases are handled within the Salvadoran judicial system. Our experience with Latin American countries indicates that processing times for serious cases is almost always much longer than in our own system.

Question 8. Can you describe for the Committee the types of training provided by the United States to Salvadoran military officers and troops that encourage greater respect for human rights? Has this training had a positive effect on troop performance?

Answer. a. Virtually all military training provided by the U.S. Armed Forces to the Salvadoran military (with the possible exception of purely technical training, such as helicopter maintenance), whether through Mobile Training Teams (MTT's) in-country, or in more formal schools and courses in the United States and Panama, encompasses formal and/or informal training in human rights-related issues. This training has been, and continues to be, an area of USSOUTHCOM emphasis, and this is increasingly true of the Salvadoran High Command as well. In this regard, the current political and military leadership

in El Salvador is in fact making progress in improving the discipline of the Armed Force.

b. With respect to specific training provided by the United States, several key topics in this area have received strong emphasis in our training programs:

(1) Leaders' proper legal and ethcal conduct in war;

(2) Law of Land Warfare;

(3) Geneva and Hague Conventions;

(4) Tactical value of proper handling of prisoners and the civilian populace;

(5) Military discipline and accountability at all levels.

c. I wish to emphasize that the formal classroom instruction in the course and topics I will address shortly is only a part of the overall training received. In fact, the classroom hours in many instances are complemented in a substantial way by the "application phase" received in practical exercises and subsequent critiques; the discussions among students and instructors; the exposure to the professional attitudes, conduct and opinions of respected U.S. instructors and cadre; and the graphic example of civil-military trust and cooperation among the U.S. Armed Forces and the civilian community (whether in CONUS or abroad).

d. The following is a broad sample of various types of training received by the Salvadoran military, with a brief review of human rights-related topics of instruction and training.

(1) *The Command & General Staff College (CGSC)* is designed to prepare field grade officers for duty as commanders and general staff functionaries. This program emphasizes the professional ethics and conduct of the military officer and provides specific instruction in Internal Defense and Development, including such human rights topics as proper procedures for dealing with prisoners and civilians; gaining support of the local populace for military operations; psychological operations (inherently involving emphasis on promoting and publicizing the government's and the military's commitment to support of the civilian populace); and civil-military operations in general. Additionally, the extensive contact with professional U.S. officers and civilians reinforces concepts of civil-military respect and cooperation.

(2) *The Service Advanced Courses* are similar in basic content to CGSC, but focused at the captain (company commander) level.

(3) *The U.S. Coast Guard Officer Candidate School (OCS)* is a 17-week course designed to transform qualified civilian applicants and enlisted Coast Guard personnel into junior officers of the U.S. Coast Guard (or foreign coast guards or navies). Emphasis is placed on group dynamics, motivation, stress management, and civil rights. Graduates must have an understanding of the importance of honor and integrity in the day-to-day conduct of an officer, and must demonstrate those personal qualities and characteristics which substantiate that understanding. Candidates must be able to describe the various laws, executive orders, court decisions, and policy statements pertaining to civil rights which an officer must apply to be an effective manager in the Coast Guard. The importance of honor and integrity relative to the character and day-to-day conduct of an officer is stressed.

(4) *The Infantry Officer Qualification Course* in Panama is designed for newly commissioned officers or cadets. This course provides instruction in Internal Defense and Development, civic action, military leadership (with emphasis on professional, ethical conduct) and psychological operations (which emphasize the necessity for developing civilian support for the government and the militarv).

(5) *The Non-Commissioned Officer Leadership Course,* also in Panama, provides extensive instruction in professional leadership and small unit infantry tactics. It emphasizes discipline, respect for law and properly designated authority, ethical conduct, discriminatory application of force, and proper handling of POW's.

(6) A 3-week course entitled *Human Rights Aspects of Internal Defense & Development* was specifically developed for and provided to the Salvadoran Armed Force in Panama. It is designed to provide an orientation on small unit operations in Internal Defense & Development. Throughout the course, emphasis is placed on the proper procedures for dealing with captured insurgents, civilian detainees, and the civilian populace. Students are taught the advantages of positive command and control at the small-unit level in preventing their soldiers from violating the basic human rights of the indigenous population. Students are also taught the techniques of fire discipline—how to use the minimum amount of firepower and force required to accomplish the mission while avoiding endangerment of innocent lives through indiscriminate firing.

(7) A special *OCS Training Course at Ft. Benning* was conducted this year for 477 officer candidates from the Salvadoran Military Academy. It consisted of a

13-week training program aimed at producing infantry combat leaders. The course is similar to that provided for U.S. officer candidates. Heavy emphasis was placed on increasing the candidates' awareness of the need for armed forces, in a counter-insurgency situation, to gain the willing cooperation and support of the populace. The following subjects dealt either directly or indirectly with human rights concerns: concepts and doctrine of internal defense and development; handling of prisoners of war in a counterinsurgency environment; counter-guerrilla operations, to include techniques of gaining popular support; military operations on urbanized terrain, including protection and handling of the civilian populace; psychological operations in internal defense and development; military civic action; community development; military leadership and responsibilities; and the Geneva Convention and the Law of Land Warfare.

(8) Additionally, a *957-man Light Infantry Battalion received specialized training* at Ft. Bragg, N.C., for 13 weeks (11 Feb.–4 May 82). The course emphasized both individual military skills required of an infantry soldier and unit training at the company and platoon level. Emphasis was placed on gaining civilian support of military operations and the practical aspects of proper human rights conduct in counter-guerrilla operations. Subjects dealing with human rights directly or indirectly were the following: security and intelligence in urban areas; handling prisoners of war; tactical discipline; troop leading procedures; gaining and maintaining popular support; civil-military relations; undermining guerrilla propaganda; Geneva Convention and the Law of Land Warfare; population and resource control; importance of civilian information; cordon and search operations, to include handling civilian personnel or known enemy personnel; population and resource control (practical application); military operations in villages and urban terrain, to include gaining and maintaining popular support, civil-military relations, etc. (practical application).

(9) Finally, a tailored 3-month *El Salvadoran Air Force Assistance Program* (ELSA) was conducted, for the most part in Panama, during Spring of 1982. A principal feature of this program—in which 16 pilots and 44 maintenance personnel were trained—was emphasis on positive control, selectivity and accuracy in aerial weapon delivery. The overriding importance of the safety of civilian personnel and friendly troops, as well as the humanitarian aspects of limiting destructive power to that which is essential to counter enemy forces, guided both classroom and application-level instruction. Follow-on efforts have been aimed at assisting the El Salvadorans to refine their air-ground coordination mechanism for effectively controlling tactical air missions.

(10) In addition to the formal schools and courses in the United States and Panama, our Mobile Training Teams (MTT's) also routinely emphasize human rights considerations. The following are more recent and recurring examples:

(a) *The Internal Defense & Development MTT* offers specific training in proper treatment of civilians and prisoners; intelligence techniques, including proper interrogation procedures; surgical application of force, to prevent unnecessary harm to the civilian population; civic action; population and resource control; and psychological operations. This 2-week course was provided to a class of approximately 25 officers in the grade of captain to lieutenant colonel, and will be expanded to 3 weeks and repeated frequently.

(b) *The Intelligence School MTT* has helped to develop an indigenous tactical intelligence capability and simultaneously supported creation of a host-country intelligence school. The intelligence training provides guidance on proper treatment and interrogation of prisoners, and proper intelligence collection techniques vis-a-vis the civilian population. The increasing intelligence capability of the Armed Force permits improved operational focus against known guerrilla forces and bases, as opposed to the more random, indiscriminate focus which characterized past Salvadoran military operations. Also, the Armed Force has created its own Interrogation Course, patterned after U.S. doctrine, whose purpose is to teach acceptable, humane and hence more effective interrogation techniques for Salvadoran intelligence personnel.

(c) *The Individual Infantry Training, and Infantry Battalion Training MTT's* provide specific instruction on proper treatment of civilians and prisoners, similar to the Battalion training provided at Ft. Bragg.

(d) *The Operations & Planning MTT*, consisting of one U.S. Army officer working with the General Staff of the Armed Force, provides constant reminders and guidance to General Staff "students" on the moral as well as practical implications of integrating positive human rights considerations into the planning and implementation of military strategy and operations.

e. Over and above the specific training I have just outlined, all U.S. trainers, both in and out of country, regularly emphasize to their Salvadoran students both the practical and moral requirements to improve standards of conduct of the military. Of equal importance, our Military Group and Defense Attaché personnel, who are in daily contact with Salvadoran military leaders at all levels, also stress the same message.

f. Overall, it is the consensus of both the Embassy in El Salvador and the United States Southern Command that the improved human rights stance and record of the Salvadoran military are attributable in large part to U.S. training. However, as U.S. military personnel are precluded from accompanying units of the Salvadoran Armed Force on operations, we are unable to obtain compelling evidence on this issue. Unfortunately also, current restrictions on the training of the non-military security forces prevent our exerting the same influence with those forces.

PROFESSOR ANDERSON'S RESPONSE TO AN ADDITIONAL QUESTION SUBMITTED FOR THE RECORD

Question. As an observer of the election process, do you believe that the elections in El Salvador were fair and honest? How did the recent election compare with previous elections in El Salvador?

Answer. The elections were fair in the sense that the six parties who chose to participate were allowed to campaign freely. Further, the voters were free to vote for the party of their choice and were, by and large, not subject to intimidation. I believe that the seat distribution in the Constituent Assembly does actually represent the voters wishes. However, I suspect that the final vote total was inflated by two or three hundred thousand to please North American opinion. The elections were unfair in the sense that there was not a wide spectrum of parties represented. The range was from the center-right PDC to the ultra-right ARENA.

The election of 1982 was certainly more fair than any other election since the honest presidential election of 1931. The elections of 1972 and 1977 were patent frauds, and in 1962 and 1967 intimidation was used by the PCN.

I am enclosing a copy of the report which Prof. Baloyra and I wrote on the elections.

EL SALVADOR: THE ELECTIONS OF MARCH 28, 1982

A REPORT BY PROFESSORS THOMAS P. ANDERSON AND ENRIQUE BALOYRA

Before the Salvadoran Constituent Assembly elections of 28 March 1982 fade from view we would like to share our impressions of this event. We offer these thoughts more as an invitation for further discussion and reflection than as a definitive statement on the "truth" about the election.

We visited El Salvador from Wednesday, 24 March, through Monday, the 29th, the day after the election. Our visit was made possible by the efforts of a group of our colleagues from the Boston area who secured the funding for our trip. Our main conclusion is very much in line with that conveyed by the media in the sense of a large turnout and an apparent lack of official coercion. However, our conclusion may be based on a somewhat different interpretation of how and why so many Salvadorans went to the polls.

On Thursday morning we visited the headquarters of the Central Electoral Council (CCE) in the Colonia Escalón in San Salvador. The offices of the CCE had been attacked twice during the previous night and early morning but despite the heavy security and the lack of an appointment we were received by Dr. Ricardo Molina Aguilar, one of the three commissioners assisting Dr. Jorge Bustamante, the commission president. Dr. Molina promised to write us a letter of introduction for the officials in charge of the arrangements at the Hotel Presidente which served as the headquarters of all the official delegations. He asked us to register with the Ministry of the Interior which we did later that morning. Through the aid of the U.S. Embassy we were also eventually registered as International Observers.

Thursday afternoon we visited the Universidad Centroamericana Simeon Cañas (UCA). The impression that we received was that the election might help open up a bit of space for the Christian Democrats to try to steer the situation back to

a more peaceful setting. Our main interlocutor displayed a mixture of hope that this would be the case, short of even a guarded optimism, and muted despair at the very dire conditions confronting most Salvadorans.

Friday morning we were back at the CCE, where Dr. Molina gave us the letter of introduction and made available to us copies of the electoral statute (*Ley Transitoria Electoral*) of January 1982, and samples of the ballot. We went to the Foreign Ministry and after a long wait were able to see Deputy Foreign Minister Alejandro Gómez who was in charge of handling the observers of the election.

Saturday morning we went out on our own. We visited the offices of the Christian Democratic Party (PDC) and of the Alianza Republicana Nacionalista (ARENA) movement, and attended a press conference by General José Guillermo García.

At the PDC headquarters we talked at some length with Dr. Guillermo Antonio Guevara Lacayo, who was serving as deputy campaign manager—Labor Minister Julio Samayoa was in charge of the PDC campaign. Dr. Guevara expressed optimism about the fact that the election would take place in at least 240 of the 261 municipalities of El Salvador. But he was apprehensive about the situation of his party in 65 of those municipalities where the local authorities were very antagonistic to his party. These were primarily areas where the civil war had brought more devastation and where the local *jefes civiles* sympathized openly with the alternative represented by ARENA's Roberta D'Aubuisson. Dr. Guevara shared the view that no party would obtain a majority of the vote but he was confident that the PDC would make a good showing and hopeful that some form of collaboration would be possible with Fortín Magaña's Acción Democrática (AD) and/or with the Partido de Conciliación Nacional (PCN).

One aspect of the campaign that has not received much attention is the situation of the PDC as it faced this election. Originally, the PDC had been very much alone in calling for an election which was ridiculed not only by the guerrillas and the FDR but also by the Salvadoran Right and the private sector. As the election approached the PDC had to stand on a less than enviable record. Low coffee prices, capital flight, the destruction caused by the civil war, and the high levels of unemployment would have been enough to defeat *any* government party. In addition to this, the PDC had to face the election unable to solve the major riddle of the Salvadoran transition and one of the principal causes of the civil war, namely, the unrestrained use of violence by the armed forces. This has alienated a large number of Salvadorans. Finally, the continuation of hostilities was being utilized by the Right to accuse the PDC of indecision and lack of resolve.

Viewed from this perspective the proportion of the vote received by the PDC in this election is not impressive but it establishes the Christian Democrats as a major force in their country.

The PDC had hoped to get about 28 seats in the race. They did very well in areas where the agrarian reform has become a fact, beating the ARENA by two-to-one margins. However, the campaign of the PDC was based on the facts of limited reforms and on the promise of continued movement toward a democratic order. The campaign propaganda of the PDC stressed the condition in which the PCN had left the country in October of 1979, and attacked the line adopted by ARENA. Therefore, the strategy of the PDC was to present itself as the only viable and realistic alternative and to risk whatever collaboration with some of its rightist opponents may become necessary in the attempt to capture an electoral majority.

It should be noted that the political spectrum for this election was very narrow. The PDC, having seen many defections to the new Social Christian Movement, which is a part of the FDR, represented the center-right. All the parties were to the right of the PDC, with ARENA being the furthest right. The parties of the left refused to participate out of fear. This does not invalidate the election, but does make it less meaningful as a true representation of Salvadoran opinion.

The main antagonist of the PDC in this election was the ARENA and we wanted to get some direct impressions of the composition and outlook of this movement. The headquarters of the ARENA was a very marked contrast to that of the PDC. ARENA's was a combination armed camp and middle class enclave where a celebration was already afoot on the eve of the election, and where two foreign visitors, who were very welcome once it was clear that they were not journalists, could not get a conversation going in Spanish since their interlocutors wanted to demonstrate their proficiency in English. There was a touch of an American-style campaign at the ARENA offices: T-shirts were being sold, poll watchers were receiving their instructions for the next day and the armed

guards were being paid while we tried to concentrate on the conversation we had with Engineer Mario Redaelli, Director of Control and Secretary of the ARENA. Mr. Redaelli's father was tortured and killed during the peasant uprising of 1932 which led to the *matanza*. Although an amicable and cordial host Mr. Redaelli was very forthright about his anti-communism. He showed us a letter purporting to demonstrate that Adolfo Rey Prendes, until recently the Christian Democratic major of San Salvador and the head of the PDC ticket to the Constituent Assembly election, and interior minister Ovidio Hernández were actually members of the Communist Party of El Salvador. Mr. Redaelli believed that the government had tried to postpone the election in order to avoid defeat, and that the Christian Democrats were embarked on a strategem to invalidate votes by telling people that they ought to tear off the numbered coupons from the ballots before depositing them in the urn. In addition, Mr. Redaelli argued that the *ley transitoria electoral* had failed to incorporate any of the proposals submitted by the five opposition parties and would, therefore, give an unfair advantage to the PDC.

ARENA had closed its campaign with a well-attended rally at the national gymnasium. The campaign had not suffered for lack of funds as ARENA was able to buy plenty of space in the local media, including most centerfold pages in the local dailies. Mr. Redaelli was not prepared to tell us what ARENA would do in case of a fraud but he stated that they would not consider a second-place finish as evidence of outright fraud.

In a nutshell, ARENA's proposed course of action would include a return of the banks and of the export trade to the private sector, a "normalization" of the legal status of the cooperatives created by the Agrarian Reform, private financing of the operation of the cooperatives, and an amnesty for the guerrillas coupled with an all out military campaign against the holdouts. There was little question of any collaboration with the Christian Democrats who would have to respond for their behavior in office.

It is always possible that the responsibility of forming a government and of making decisions about public policy may moderate the views of actors occupying the extremes of the political spectrum. This is a very optimistic assumption when it comes to Central American politics, and certainly a very long shot in the case of ARENA and El Salvador. The impression that we received observing ARENA from up close is that Mr. D'Aubuisson is at present a good umbrella for the most reactionary element of Salvadoran society, as well as an attractive figure for certain elements bent on ending the leftist violence at any cost. Our interviews with voters on election day gave us pause and considerable contradictory evidence about what the ARENA represented for the average Salvadoran voter in this election. By this we mean that, in many cases, ARENA and PDC were the first and second choices of some people respectively. This is a phenomenon somewhat similar to that registered during the 1968 campaign in the United States, when analysts of that race discovered some crossover among Kennedy and Wallace voters. We lack even the rudiments for any kind of serious inference concerning the extent and meaning of these combination of preferences in the Salvadoran situation. However, certain things are fairly certain.

There was a clear choice for Salvadoran voters in this election represented by José Napoleón Duarte and his PDC on the one hand, and Roberto D'Aubuisson and the ARENA movement, on the other. No other personal or institutional contenders came close to these, nor were their campaigns sufficiently specific or well organized to register among the voters. The PDC and ARENA captured two of every three votes cast. The jockeying for positions and the tough stances and exclusionist maneuvers going on the week after the election are exceedingly important, and they may sink whatever was gained by the election. But the fact remains that the makeshift coalition put together by the ARENA is exceedingly unstable and heterogeneous at the level of the electorate, and that in their head-to-head confrontation with the most reactionary of their adversaries the PDC was the choice of a large number of Salvadorans.

Although not an official candidate for anything, General José Guillermo García was acting like a politician in the final days of this campaign. (Notices were posted at the different hotels where foreign journalists were staying announcing that General García would receive the press at 10 a.m. on Saturday morning, in the amphitheatre of general staff.)

General García is obviously in control of the Salvadoran armed forces. This gives him a tremendous amount of political influence as he is the formal head of a state within the state. The Armed Force's willingness to abide by the out-

come of this election should not be interpreted as a readiness to accept civilian supremacy. Although not of the same generation of military officers that produced Generals Molina and Romero, the last two military presidents elected by fraud in 1972 and in 1977, respectfully, General García represents a continuity with the manner in which the military have behaved in El Salvador in the past. Moreover, in every process of political transition that has occurred in El Salvador in this century—including the *matanza* of 1932, the overthrow of General Martínez in 1944, the "revolution" of 1948, and the mini-revolt of 1960, a military man has always emerged as the key figure that has dominated the process and steered the situation back to "normal."

The Christian Democrats' inability to muster a majority of the vote in this election, the mutual distrust and recrimination among the leading vote-getters (PDC, ARENA, and PCN), and the extremity of the views of former major Roberto D'Aubuisson could make García a compromise candidate to lead the provisional government selected by the assembly delegates. When asked if he would accept a presidential draft at his Saturday morning press conference, the portly general grinned and answered that any man would be hard put to reject such an offer. Yes, he would consider that offer very seriously; no, the Armed Force would not give to the guerrillas (though negotiation) what these had been unable to gain in the battlefield—even if that sovereign government that was about to be organized decided to negotiate. In short, even though Duarte had promised to put the military on a short leash after the election, they were in no hurry to accept civilian supremacy, at least over issues of national security. This being the case, and the Salvadoran Armed Force being part of the problem, it was hard to see how the election would become an efficacious tool of civilian supremacy in the short run.

But there was, after all, an election on 28 March 1982 in El Salvador. There were clear cut choices confronting an electorate which, for the most part, as far as most observers could determine, was not coerced to vote.

There is little question that the turnout was better than anticipated. Unofficial results of 1 April gave a figure of 1,197,575 votes cast. This total was below the turnout registered at the election of 1977 which the government stole from the opposition but much better than the most optimistic estimates proffered by the CCE and by some of the political parties. It is hard to figure out what percentage of the eligible population voted. Use of the more recent census would ignore the true extent of what has to be one of the largest migrations of modern times. In August of 1981 the regional office of the United Nations' High Commission on Refugees estimated that about 300,000 Salvadorans had fled the country, while an additional 180,000 who had been uprooted from their homes were drifting inside the country. There were long lines at most polling places and apparently plenty of desire to vote on the part of people who, in many cases, had to walk a few miles to and from the polling place and, in all cases, stand in line for a few hours. However, the long lines were somewhat artificial as they reflected the CCE's decision to keep the number of polling places to a minimum. This probably resulted from security considerations since the fewer the number of places where people could vote the easier it would be for the Armed Forces to defend these. This had the additional effect of guaranteeing the CCE that it would not be embarrassed by skimp lines anywhere on election day. It may have also assured CCE planners that people who would have to wait for a long time would not be able to hopscotch from one polling place to another and try to beat the system voting in several places.

Ironically this decision may have contributed to deflate turnout somewhat as the long lines and the long waits may have sent some people home early, especially in those areas without electricity where the polls were supposed to close down at 4 p.m. For example, in San Salvador, a city of 750,000, eligible voters had only thirteen polling places where they could go on election day. To be sure, there were between 40 and 50 voting tables at each of these 13 places but voters had to get into the precinct first and the lines were also very long at each of the tables.

According to lists published in the Salvadoran media there were 4,556 voting tables. John Carbaugh, an assistant to Senator Jesse Helms (R-NC), figured out that it would take about 3 minutes for every voter to be screened by the electoral *juntas* manning the voting tables, check all voter's fingers, and check the *cédula* (identification card) of the voter for any previous marks made with indelible ink, give the ballot to the voter, stamp the cédula, write in the voter's name and cédula number in the registry, return the cédula to the voter, and mark one of the voter's fingers. The marking of the cédula with a stamp might later be used as a means of identifying who had voted, and this in turn might be used

as a test of loyalty to the regime. We did not, however, meet anyone who expressed anxiety on that score, but it is possible some voters went to the polls with this in mind. Given the chaotic situation, many excuses could be offered for not going to the polls. At 20 voters per hour and 11 hours in which to vote (from 7 a.m. to 6 p.m.) there was little time to waste. We were told that some juntas had been authorized to stay functioning longer but we have no way of estimating how many people could not vote as a result of procedural delays.

Before we try to do justice to the complexity of the apparent motives that drove the Salvadorans to vote on 28 March, let us very unequivocally say that Salvadorans were voting for peace and for themselves. This was the strongest impression we gathered in our unsystematic and brief interviews with voters on election day, whether these were with the people of Apopa, crouched behind trees and hedgerows, waiting for gunfire to die down so that they could get to the school and vote; with the people of Santa Tecla, where we observed what was perhaps the smoothest and most orderly operation; with the voters of La Libertad, many of which had come down on foot from the surrounding hills; with refugees from Suchitoto who had left their camp outside Santa Tecla to go to the polls; or with the voters lined up boisterous and disorganized fashion at Cuidad Delgado who were being literally crushed in their attempts to get in every time the door of the "12 de Octubre" school opened to let a new wave of voters in. This looked and smelled like an election, pure and simple, and those who were taking part were using the only means at their disposal to endorse a peaceful way of resolving the Salvadoran crisis. Not that they were naive or overly optimistic about it. Many recognized that the election itself would not take care of the problem but would at least send a signal to the more recalcitrant elements on both sides about the fact that the Salvadoran people are against violence.

When we got to Apopa, a small town on the Troncal del Norte highway leading north to Chalatenango from San Salvador, practically no one was on the street. It was already 7 a.m., and this seemed to indicate to us that the election would be a bust in towns like Apopa, Guazapa and Aguilares, in the middle of "Indian country," which we intended to visit later on. The reason why very few people were on the street was that we had managed to drive into town in the middle of an army sweep that was trying to dislodge some *muchachos* or *subversivos* from the area between the town square and the "Vicente Acosta" school, where the voting was supposed to take place. To be sure, the guerrillas were not shooting at would-be voters but they were creating a line of fire between the school and the two streets leading to it from the middle of town.

After we had managed to park the car, get out of the line of fire, and move closer to the town square most of the shooting was to the right and ahead of us. At about 7:30 a sergeant came into the plaza and shouted that he thought the way was clear. This is when we saw the election come alive as people began to spring up from under cars, from behind trees and verandas and everything that can hide a human being in a situation like this. About 500 people came out of nowhere and began to march down the street toward the school. Some were in their Sunday best, others were laughing and making jokes about the situation. Some were intrigued by our presence and wanted to know if we were some kind of observers. Gunfire made us stop a couple of more times, and most of this growing contingent of people had to wait until about 8:30 a.m. before they were able to get into the school. This gave us a chance to ask them why they were going on with this. We were specially intrigued by the number of young males in the crowd; we did not expect to see this group except as guerrillas, army conscripts, or disappeared persons. Yet they were very much in evidence in this crowd, and they provided most of the entertainment every time the firefight died down. There must have been about 2,000 people in the small school patio when the polls finally opened. The soldiers would not let anyone on the second floor, from which they would occasionally fire at the guerrillas. Around 9:30 a.m., a TV crew got to the school and then we were all treated to about 3 minutes of M–60 and M–16 fire. This mock aspect of the firefight did not end until one person in our party went up and told the camera crew that the soldiers would keep on firing for as long as their camera kept clicking.

The casualties of the Apopa firefight were two dead, both national guardsmen including one kidnapped the night before the election and shot in front of the school where his blood formed a gruesome pool, and three soldiers wounded. Needless to say, the Salvadoran military were behaving themselves during these days, particularly after the assassination of the four Dutch journalists, and they were very cooperative with all foreigners and, as far as this is possible in El Salvador, relatively cordial to their own people. In Apopa we saw their human

side, even their fear at times, but were not particularly impressed with the desire to engage the guerrillas. Some of the NCOs complained about the absence of officers in the area—we only saw one officer, a burly lieutenant, at the beginning of the firefight. No one seemed to be in charge. Their orders might have been to protect the polling place first but, after all, two guerrillas were entrenched only 100 meters from the entrance of the school and, at times, there were no army or national guard elements between the entrance and the guerrillas' position. When we left the area at about 10 a.m. the guerrillas were still there.

We never made it to Guazapa as the bridge leading out of Apopa along the Troncal had been mined, and we were told by army sappers defusing the mines that the road ahead was in a similar condition. The detour away from this bridge led through the area where the guerrillas had their main force outside Apopa and, as a result, we decided to head west. What we saw at Ciudad Delgado, Santa Tecla and La Libertad was less dramatic than the scene at Apopa but there was little question that an election was going on and that the Salvadorans were taking this chance seriously.

The guerrillas had scattered leaflets on the mined bridge and we helped ourselves to some. The leaflets asked the Salvadorans to stay away from the electoral farce and to boycott the proceedings by throwing red paint on the streets, spreading thumbtacks and boulders on highways and thoroughfares, burning tires, defacing and mutilating ballots, staying at home, and several other means. FDR leaders had declared that they would simply ignore the election and allow the proceedings to be exposed for their bogus nature. Some guerrilla *comandantes*, on their part, vowed to prevent the election from taking place in their areas. In short, no one seemed to be in charge of a common and coordinated leftist response to the election. This included the comandante who sent twelve of his men into San Antonio Abad, a town in the outskirts of San Salvador, to try to disrupt or prevent the election. Not one of them survived, as well entrenched army units fought them for 2 hours. We wondered when the Salvadoran armed forces will start taking prisoners and how would guerrilla commanders respond to the large turnout. In most cases the guerrillas simply watched in disgust as some people sorted their way around their roadblocks and went on to vote. In others they were able to keep people away from the polls as they engaged the army in day long battles. This election has a message that they should ponder with care.

We take issue with those who will interpret this election as a clear cut victory for the Right and as a setback for the cause of democracy in El Salvador. Elections imply risks and this is precisely what a democratic process entails; authoritarian solutions maximize certainty at the expense of civil liberties. Therefore, the elections first and foremost imply a victory for those who were willing to risk something in this process, including life and limb. No matter how garbled the message and how intricate the pattern of motivations behind the large turnout, the turnout itself was an expression of hope that things can be different in El Salvador. Elections are procedural instruments and not ends in themselves but they are necessary mechanisms to get the democratic process going.

It would be erroneous to interpret the elections as a mandate for a military solution in El Salvador. Most Salvadorans hope for a peaceful settlement and voted in the belief that their vote might bring such a conclusion to the civil war. Nor should the vote be interpreted to mean that the FDR and the rebels are without support. Despite the relatively high turnout, almost half the possible electorate did not vote for one reason or another.

Back in San Salvador we were able to compare notes with other observers. We had finally been given official accreditation on Saturday afternoon, thanks to the intervention of our Embassy, and we now had access to the v.i.p. enclave at the Hotel Presidente. A weary Julio Samayoa was monitoring the returns and keeping tab of the future of his PDC at the theatre adjoining the hotel. Dr. Jorge Bustamante, the CCE President sat on the stage in front of a huge display where the first returns were being tallied; his tension seemed to be giving way to an enormous relief. Journalists and observers traded stories and anecdotes, trying to put together a composite of the day.

Sunday evening was marked by the sporadic explosions and gunfire that had lulled us to sleep the previous nights, if only to remind us that a civil war was still going on.

Monday morning Dr. Arístides Calvani, a former Venezuelan foreign minister, sat among friends for breakfast at the patio of the Hotel Presidente. Dr. Calvani has been a constant advisor to Napoleón Duarte and he was being congratulated by fellow Christian Democrats who had observed the election. A short distance away Dr. Bustamante fought off the residue of a sleepless night

98-270 O - 83 - 18

with a cup of coffee, within earshot distance of a large gathering that was listening to the account of the Reverend Theodore Hesburgh, who had helped save Mr. Duarte's life in 1972, and had travelled extensively throughout the country during election day. Ironically, the Right was already organizing an exclusionary maneuver to drive the Christian Democrats out of the government. Everyone was claiming victory. It is still hard to see how and whether this Salvadoran election will make a profound impact in the future life of the country. One election does not change the political culture of a society, does not bring together irreconcilable enemies, does not change the political economy of a nation, and does not make believers out of those with little regard for democratic norms. Before Sunday 28 March, very few people gave the election much chance. But all Third World crises are not alike, nor is El Salvador like Guatemala or Nicaragua. Each people must find its own way. We hope we have watched Salvadorans start a long and difficult march toward something better.

Thomas P. Anderson is the author of two books about El Salvador, *Matanza* and *The War of the Dispossessed*. Professor Anderson's latest book, *Politics in Central America*, has just been published. Dr. Anderson teaches Latin American history at Eastern Connecticut State College.

Enrique Baloyra is the co-author of two books on electoral campaigns, public opinion, and voting in Venezuela. In December 1980, Dr. Baloyra wrote a report for the Department of State on the Salvadoran crisis. An expanded version of that report, entitled *El Salvador in Transition*, will be published in October by the University of North Carolina Press. Professor Baloyra teaches Latin American politics at the University of North Carolina at Chapel Hill.

APPENDIX

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
OFFICE OF THE DIRECTOR,
Washington, D.C., August 17, 1982.

HON. CHARLES H. PERCY,
Chairman, Foreign Relations Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I have seen the Congressional Record for July 27th and, in view of your ongoing interest and that of the Committee members in the murders of the American churchwomen in El Salvador, I would like to clarify some remarks attributed to a report released by the Lawyers Committee for International Human Rights which concern the FBI. I am familiar with the report and I believe the allegations of inadequate investigation by the FBI are unjustified.

As you are aware, the FBI has no authority to investigate criminal acts which take place outside the jurisdiction of the United States. We have, however, provided investigative advice to American Embassay officials and to Salvadoran authorities responsible for investigating the deaths and have conducted timely and thorough investigations within the United States based upon leads developed in El Salvador. At the request of the State Department and at the direction of the Attorney General we sent five Laboratory and fingerprint experts to El Salvador to assist in examination of the burned-out van in which the churchwomen had been traveling. Fourteen latent fingerprint impressions were developed and photographed for comparison with any fingerprints that might be submitted, including those of suspects or persons having legitimate access to the van. To date, the FBI has examined identifiable prints of thirteen individuals for comparison purposes. In addition, our Laboratory specialists conducted examinations of debris found in the area of the murders. These included serology, accelerant, hair and fiber, paint, document, and firearms examinations. The Bureau also provided polygraph assistance in this case. As I stated previously, we are not operational in El Salvador. We have no investigative jurisdiction there and we can take no initiative in pursuing fingerprint or ballistics examinations or in developing any other investigative leads.

We sympathize deeply with the families of the four churchwomen and are as anxious as they are to see those responsible for this heinous crime brought to justice. We are not, as the report states, insensitive to their desires to obtain as much information as is possible regarding the deaths of their loved ones. The details of the FBI's assistance in this investigation are, however, being withheld pursuant to the Freedom of Information Act, Title 5, U.S. Code, Section 552, which exempts from release information which is currently and properly classified in the interest of national defense or foreign policy, as well as the release of investigatory records compiled for law enforcement purposes, the disclosure of which would interfere with law enforcement proceedings, including pending investigations. The report alleges the FBI is in violation of the Freedom of Information Act by not releasing this material, while in fact, a requester of this material under the Act filed a formal appeal with the Department of Justice and after a careful review by Departmental Attorneys the FBI denial was upheld. In the interest of insuring that prosecutive efforts in this case will not be jeopardized by premature disclosure, we will not make any specific comment or release the results of any evidentiary examinations we have conducted.

I hope this information will help to set the record straight with respect to the Bureau's jurisdiction and role in the investigation of the murders of the American churchwomen. If I can be of any further help, please let me know.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

CENTER FOR DEVELOPMENT POLICY,
Washington, D.C., August 2, 1982.

DR. MARGARET HAYES,
Senate Foreign Relations Committee,
Dirksen Senate Office Building,
Washington, D.C.

DEAR DR. HAYES. Enclosed please find information relating to the recent visit of a delegation of U.S. citizens to El Salvador. Included in this information is a list of those participating in the delegation, a list of the people with whom they met, and some preliminary indications of the type of perspective they can be expected to bring to public hearings in the Senate.

While we would maintain that any of the individuals present on the trip would be equally qualified to discuss what we saw, it might be most productive if Senator Clark, Arnold Torres or Richard Feinberg were invited to testify due to their experience in working on Capitol Hill. We know of Mr. Torres' interest in testifying as a representative of his organization, and believe that a panel presentation with one or two other members of the delegation would be an effective format.

We feel that U.S. relations with Central America are at a critical juncture right now. Our recent experience in El Salvador has provided us with information and a perspective that would otherwise be unrepresented at the hearings. For these reasons we feel it would be productive and worthwhile for a member of our group to testify at the hearings.

Thank you for your consideration in this matter.

Sincerely,

WILLIAM M. LOKER,
Center for Development Policy.

Enclosure.

COMMISSION ON UNITED STATES-CENTRAL AMERICAN RELATIONS
DELEGATION TO EL SALVADOR

Senator Dick Clark, former U.S. Senator from Iowa, widely known for his concern about U.S. policy toward developing countries; currently Director of the foreign policy project at the Aspen Institute.

Arnold Torres, National Executive Director of LULAC, head of the Washington office of that organization and a key person in that organization's interest in U.S.-Latin American policy.

Harold Berry, businessman from Detroit, Michigan, President of TELECO, Inc. which includes a chain of radio and television stations in the upper-Midwest, founder of the Fisher News Center.

Richard Feinberg, Overseas Development Council, formerly headed Latin American Division of Policy and Planning at U.S. State Department; also served in U.S. Treasury.

Janet Shenk, Vice President of NACLA, the North American Congress on Latin America, a leading research and publishing institute on Latin American affairs. Janet is co-author of the recent book, *El Salvador: the Face of a Revolution.*

Lt. Col. John Buchanan, USMC, Ret., Director of Area Studies at the Center for Development Policy, expert in military matters, particularly the strategic interests of the U.S. in Central America and the balance of military power in the region.

Robert S. Leiken, Latin American specialist at the Center for Strategic and International Studies, Georgetown University. Leiken is Director of the Soviet-Latin American Program at CSIS and the author of numerous articles on U.S.-Central American policy.

Gino Lofredo, development economist, formerly with Appropriate Technology International, where he supervised ATI's projects in Central America. Also counsellor to the Latin American Human Rights Association in Washington.

William Loker, anthropologist and staff member of the Center for Development Policy. Ten years experience travelling, studying and working in Central America.

Susan Moeller, freelance photographer and writer; photos have appeared in Time, Newsweek, VISTA publications and elsewhere.

David Rust, reporter-cameraman for Channel 4 in Indianapolis, Indiana.

Bill Adler, Legislative Representative, Americans for Democratic Action.

Chauncey Alexander, Consultant, former Executive Director, National Association of Social Workers.

J. Sinclair Armstrong, Chairman, The Fund for Peace.
Cynthia Arnson, Johns Hopkins University, School of Advanced International Studies.
Thomas R. Asher, Chairman, The American Council.
Harold Berry, Chairman, TELECO, INC.
Jack A. Blum, former counsel, Committee on Foreign Relations, U.S. Senate.
Robert Boehm, Chairman, The Fund for New Priorities.
Tony Bonilla, President, League of United Latin American Citizens.
Lt. Col. John H. Buchanan (USMC, ret.), Center for Development Policy.
Rt. Reverend John H. Burt, Episcopal Bishop of Ohio.
Senator Dick Clark, Senior Fellow, Aspen Institute.
Shelton H. Davis, Director, Anthropology Resource Center.
Leslie W. Dunbar, Director, Project on National Goals.
Joseph T. Eldridge, Director, Washington Office on Latin America.
Richard Erstad, Director, Latin American Programs, American Friends Service Committee.
Richard Fagen, past President, Latin American Studies Association.
Frances Tarlton Farenthold, Attorney, former President, Wells College.
Richard Feinberg, former staff, Policy Planning Division, U.S. State Department.
Hamilton Fish, III, Publisher, Nation Magazine.
Newell Flather, Chairman, Oxfam-America.
Stanley A. Gacek, attorney, United Food & Commercial Workers Int'l Union.
Jo-Marie Griesgraber, Deputy Director, Washington Office on Latin America.
Senator Floyd K. Haskell, attorney, Washington, D.C.
Russell Hemenway, National Director, National Committee for an Effective Congress.
Adam Hochschild, Contributing Editor, Mother Jones Magazine.
Bishop Leroy Hodapp, President, United Methodist Board of Church & Society.
Colonel Edward L. King (USA, ret.), former Joint Chiefs Liaison, Inter-American Defense Board.
Susan Bennett King, former Chair, Consumer Product Safety Commission.
Vice Admiral John Marshall Lee (USN, ret.), former Commander, Amphibious Forces, U.S. Seventh Fleet.
Robert S. Leiken, Director, Soviet-Latin American Program, Center for Strategic & International Studies.
William M. LeoGrande, Director, Political Science, The American University.
J. Griffin Lesher, attorney, Clifford and Warnke.
Morton J. Levy, Investment Manager, New York.
Nancy Lieber, Coordinator, Democracy in the Americas Conference.
Gino Lofredo, Counselor, Latin American Human Rights Association.
J. Roderick MacArthur, Chairman, The Bradford Exchange, Ltd.
Jack Malinowski, Coordinator, Global Justice Program, American Friends Service Committee.
Raul S. Manglapus, President, Center for Development Policy.
Karl Mathiasen, III, Director, Planning & Management Assistance Project, Center for Community Change.
James Mauro, attorney, Int'l Union of Electrical, Radio & Machine Workers.
John McCarthy, Auxiliary Bishop, Diocese of Galveston-Houston.
Cynthia McClintock, Associate Professor, Political Science, George Washington University.
B. Gen. William E. McKean (USMC Ret.).
Roger Molander, former staff, U.S. National Security Council.
Edgar Owens, Intermediate Technology Development Group—North America.
Maurice S. Paprin, President, Associated Builders, New York.
Robert A. Pastor, former Senior Staff, Latin American & Caribbean Affairs, National Security Council.
David M. Quilter, Legislative Assistant, Office of Rep. Mickey Leland, U.S. House of Representatives.
Sister Lora Ann Quinonez, CDP, Executive Director, Leadership Conference of Religious Women of the USA.
Nancy Ramsey, Co-founder, Committee for National Security.
Paul S. Reichler, attorney, Powell, Goldstein, Frazer & Murphy.
Sheldon L. Richman, Scholar and Writer.
Reuben B. Robertson, Attorney, Hydeman, Mason, Burzio & Lloyd.
Nancy Rubin, Board Member, Overseas Education Fund.
Erwin L. Salk, President, Salk, Ward & Salk.

Judith R. Schnidman, Int'l Coordinator, United States Student Association.
Janet Shenk, Vice-President, North American Congress on Latin America.
Joseph Short, Executive Director, Oxfam, America.
Philip M. Stern, Stern Fund.
Paul H. Strege, Projects Director, Partners in Mission, Association of Evangelical Lutheran Churches.
Margery Tabankin, former Director, VISTA Program.
Arnold Torres, National Director, League of United Latin American Citizens.
Frederic J. Truslow, Attorney, Lane & Edison, P.C.
Senator John V. Tunney, Attorney.
Douglas P. Walker, Managing Director, Public Affairs International.
Stanley A. Weiss, President, American Minerals, Inc.
Richard Alan White, Project Director, Mexico-U.S. Relations Program, Center for Third World Studies (CEESTEM).
Ambassador Murat Williams, former U.S. Ambassador to El Salvador.

CITIZENS' DELEGATION TO EL SALVADOR

AGENDA

Saturday, July 24

Arrive San Salvador.

Sunday, July 25

8:30 a.m.–12:30 p.m.—Meet with Representatives of the University of Central America, a Jesuit-run university which is the leading center of intellectual thought since the closing of the National University by the government in 1980.

1:30–6:30 p.m.—Travel to a cooperative set up by Phase 1 of the land reform to meet with technical advisors from ISTA, who are in charge of administering the reform, and the campesinos who now run the farm.

Monday, July 26

8–11 a.m.—Committee for Justice and Peace of the Archbishop's office.

8–11 a.m.—*Hugo Barrera*, secretary general of the ARENA party, second in command of the party after D'Aubuisson.

11:30 a.m.—Minister of the Presidency, *Jose Francisco Guerrero*, Party of National Conciliation (PCN).

1–4 p.m.—Visit to El Playon, a clandestine cemetery for victims of political violence.

4:30–6:30 p.m.—Meet with representatives of the American Chamber of Commerce.

Tuesday, July 27

7:45–9:15 a.m.—*Ignacio Ellacuria*, rector of the University of Central America.

9:30–10 a.m.—*Acting Archbishop Rivera y Damas.*

10 a.m.–1:30 p.m.—Tour Catholic-church sponsored refugee camp and meet with displaced persons living in marginal conditions in San Salvador.

2:30–3:45 p.m.—U.S. Embassy briefing with *Robert Driscoll* (political officer), *Bonnie Mae Lincoln* (economics officer), *Col. Waghlestein* (military attache) and *Tom Sturgel*, chief AID officer.

4–6 p.m.—*Morales Ehrlich*, secretary general of the Christian Democratic Party.

4:30–6 p.m.—*Rene Fortin Magana*, leader of the Democratic Action Party.

6:30–8 p.m.—Meet with members of ANEP, the official organization of private enterprise in El Salvador.

Wednesday, July 28

9–10 a.m.—Minister of Foreign Relations, *Fidel Chavez Mena*, of the Christian Democratic Party.

10–11:30 a.m.—*Alvaro Magana*, President of the Republic.

10 a.m.–1 p.m.—Minister of Defense *General Guillermo Garcia* and Chief of Staff *Col. Flores Lima.*

11:30 a.m.–12:30 p.m.—Visit the Fifth Military District Headquarters in Cojutepeque and discuss the military situation with commander of the garrison, *Col. Garcia.*

12:30–4 p.m.—Tour refugee camp in San Salvador.

4–7 p.m.—Visit Mercado del Cuartel in San Salvador, talk with vendors, merchants.

7:30–11 p.m.—Dinner at the residence of U.S. Ambassador *Deane Hinton.*

Thursday, July 29

Torres, Clark, Berry, Feinberg, Loker and Rust return to U.S.
Buchanan, Shenk, Lofredo and Moeller go to Honduras.

COMMISSION ON UNITED STATES-CENTRAL AMERICAN RELATIONS

CITIZENS' DELEGATION TO EL SALVADOR: PRELIMINARY IMPRESSIONS

It is ironic that while in El Salvador, the delegation of U.S. citizens sent to that country to gain insight into the political situaton there felt like it was out of touch with important political isssues due to our absence from Washington. It is true, and some would say unfortunately so, that the United States plays a dominating role in the internal affairs of El Salvador. This situation is exacerbated by the current certification process which, by the mandate of Congress, is debated every six months. Yet U.S. involvement is a fact of life and it is not likely that this situation is liable to change in the future. It is therefore incumbent upon this country—policy makers, Congress and the U.S. public—to make this involvement as constructive as possible.

In some sense, this was the intent of Congress when it imposed the certification requirement on the Executive branch. But somehow one gets the impression that this goal has been lost in the shuffle of political claims and counter-claims regarding the progress of the Salvadoran Government in fulfilling the certification requirements. Clearly the issue has become a political football, to be kicked around, mainly along partisan lines, while the crisis in El Salvador deepens and U.S. involvement grows on a daily basis. Meanwhile, the necessary reassessment of policy is ignored.

In testifying before the Senate Foreign Relations Committee, members of the Citizens' Delegation to El Salvador would like to approach some of the fundamental issues of policy which are taken as given in the current debate over certification. Only through such a discussion can we meaningfully discuss some of the problems we have with the actual certification and express recommendations to remedy some of these deficiencies.

Our group was one of the only non-partisan groups who visited this troubled country in order to explore the issue connected with certification, which are undoubtedly some of the most critical problems in framing U.S. policy toward El Salvador and the Central American region. In meeting with the impressive host of dignitaries that agreed to see us, we avoided confrontational questioning, endeavoring instead to determine what the Salvadoran vision of their society and future directions might be. This was also our wish in meeting with people outside the government—from intellectuals, to Church representatives, to ordinary citizens and displaced people.

It is the opinion of this delegation that this—the Salvadoran vision of their reality and hopes for the future—must be the point of departure in discussions of U.S. policy. In our open and often very frank discussion of these issues with Salvadorans, we came away with a set of opinions and explicit recommendations that may have not been previously expressed to Washington through official channels. These ideas are new because they are the product of a specific Salvadoran reality arrived at through a long process of social and political travail. They are the product of the events leading to this critical moment in Salvadoran history.

There is in El Salvador today a tremendous sense of war fatigue. A disillusionment with the path of seeking a military solution to the conflict. A recognition that the costs are too high. We believe this is a sentiment which is growing in strength, and perhaps the clearest consensus to come out of the March 1982 elections. And we believe it is a sentiment that exists on both sides of the war. As the war drags on with no clear-cut victory for either side and excessively high human and material costs, the willingness to seek a political, rather than military solution, grows.

Therefore, we feel that it is time for a new initiative in U.S. policy toward El Salvador. An initiative that will have strong positive effects on U.S. standing in the region and the world. This initiative would move away from confrontation and seek to identify with those elements ready to initiate a dialog. We believe that there are elements within the present power structure, and among the opposition, that are disposed toward dialog. But it will take an overt U.S. stance for this position in order to make it politically safe for people in the government and the opposition to express this sentiment.

We are not speaking here of an imposed solution. It is imperative that dialog be sought openly and willingly for it to be successful. We feel that events of the

recent past, since the elections, have created the circumstances in which the Salvadorans themselves prefer this path. It would be tragic indeed if the United States missed the opportunity for a constructive role in this process. It would raise the opinion of the Salvadoran people of U.S. involvement in their country immeasurably. And as one Salvadoran expressed it, "It is better to have a friendly people than a friendly army."

We would appreciate the opportunity to express these ideas at greater length in public testimony and explain why we feel the time has come to put U.S. policy firmly behind a policy of initiating a dialog between the contending forces in this war-weary land.

HUMAN COMMUNICATION SYSTEMS,
Reston, Va., July 28, 1982.

DR. MARGARET HAYES,
Senate Foreign Relations Committee Staff,
U.S. Senate,
Washington, D.C.

DEAR DR. HAYES: Enclosed is a draft paper on a matter related to the certification of progress in the land reform program in El Salvador. It describes a violent and widespread campaign against tenant farmers who have tried to apply for ownership of a few acres of land under the "Land to the Tiller" program authorized by Decree 207. It quotes one informed estimate that 3,600 small tenant farmers have been killed since the program was started in May 1982.

No one really knows how many applicants have been killed and how many have been evicted at gunpoint. The total may run as high as 10,000 or 15,000.

As a consultant to AID/AIFLD in 1980 and 1981, I planned and analyzed two informal surveys of tenant farmers and several other fact-finding efforts. Research staff at the State Department and rural development staff in the AID Mission in El Salvador know of the situation described in the enclosed draft. Understandably, no one wanted to disseminate widely news of the widespread success of violent anti-reform activities nor the lukewarm enthusiasm with which Decree 207 was implemented. Now that the junta is no longer in power, it seems to me that facts from the pre-election period are important in order to have some perspective on recent progress in land reform in El Salvador.

I would hope that the Senate Foreign Affairs committee would make some effort to find out about how many small farmers with provisional titles are actually farming their land this summer. The magnitude of recent requests for P.L. 480 corn from El Salvador would give one clue. If you are interested in further details I can be reached at the address above or at 437-3878.

Sincerely yours,

JOHN C. COBB, JR.

Enclosure.

FORMER LANDLORDS VS. TENANT FARMERS

A BLOODY BATTLE AGAINST LAND REFORM IS GOING ON BEHIND THE SCENES IN EL SALVADOR; THE VICTIMS ARE POOR FARMERS

Part of the current violence in El Salvador has little or nothing to do with the fighting between the leftist guerrillas and the Army. Another bloody battle is between thousands of poor tenant farmers and their former landlords. It started shortly after small tenant farmers were given the right to claim the land they were farming in April, 1980. The violence increased in 1981 when the small farmers actually started filing claims.

It is an uneven battle since the landowners have the guns, and the poor farmers are taking the casualties. Even during the time when the Christian Democrats had influence in the military-civilian junta, little was done to restrain murders and violent evictions ordered by former landlords who were furious about the land reform programs.

While Decree 207 of the agrarian reform program has given several thousand small tenant farmers a secure piece of land to farm, for other thousands it has meant eviction at gunpoint by "the former landlord" or his henchmen, threats of being killed and sometimes death in the night because of a claim filed at a government land reform office.

When the bodies of these poor farmers are found, their mouths are often stuffed with dirt. Their neighbors understand the brutal message: hunger for land of their own has caused their death. The intimidation tactics have largely

succeeded and less than one third of the eligible tenant farmers have filed claims for the land they were farming in 1980. And among the 29,000 who had the nerve to file a claim, no one knows how many have been forcibly evicted and how many have been killed.

In the spring of 1980 just after the land reform program had been announced, a U.S. AID official reported that the reaction of Salvadoran landowners of 50 to 250 acres he had talked to "had thus far been overwhelmingly hostile."

"Many of them are furious and have already taken steps to evict *arrendatarios* [renters] who had earlier made rental arrangements with them. In every *departamento* [province] I visited, there were numerous reports of owners returning rent money to renters and throwing them off the land . . ."

"In an area of Ahuachapan, for example 25 *arrendatarios* had made arrangements with a medium-sized landowner, paid him, and received receipts (which is rare). They had also begun preparing the ground for planting when Decree 207 was announced. The landowner promptly sent his son to plow up the land they were using, and threw the tenant farmers off. When they persisted, the owner confronted them with a group of national guardsmen . . . and told them to leave . . . It was also indicated that if they tried to farm the land the national guard would be forced to take 'drastic measures.' The owner even refused to return their money to them."

It may seem strange that a landholder could call on the local contingent of the national guard to enforce eviction of tenant farmers who had paid in advance and had a receipt. But in El Salvador the national guard has always responded to the needs of local landowners and assumed that this was the proper thing to do. In this case, it was, of course, the land reform announcement [Decree 207] that angered the landlord and led him to call on national guardsmen to try to protect himself from the effects of the new law.

In this particular case, the 25 tenant farmers won the next round by going to the capital city and complaining to officials of ISTA, the government land reform agency. A call was made to the provincial commander of the national guard, and the guardsmen were asked to back off.

Usually law and order in rural El Salvador has meant whatever the local landowners said it meant. In the view of most rural landlords, agrarian reform was something which had to be fought and defeated. It was not difficult to find national guardsmen or others who would do whatever threatening and killing was necessary to maintain the old order which existed before Decree 207 was announced.

A U.S. government assessment of the agriculture sector in El Salvador in 1977 said that 83.5% of the rural population lived in poverty. Sixty-five percent of these two million people farmed very small plots of land; the rest were landless. The poverty line was defined as an annual income of $225 per capita.

The same report says that about half of all the farms in the country are leased or rented farms of less than five acres. Even when carefully cultivated, these micro-farms cannot support a family, and these tenant farmers hire themselves out as wage laborers during three or four months of the year to help with the harvest of coffee, cotton and sugar cane.

The big cash crops are harvested in the dry months of the tropical winter, and corn and beans are grown in the wet months of the summer. Even if a poor farmer plants corn and beans on a hillside in the spring and earns three dollars a day during part of the winter, he earns barely enough to keep body and soul together.

At the other extreme, the largest 4 percent of the farms of El Salvador contain 64 percent of the country's farming land. The typical pattern is to plant cash crops on the best land and to rent out the hillsides in units of a few acres each. The big farms produce the export crops of coffee, cotton and sugar which are an important sector of the national economy. In an article several years ago, economist Melvin Burke pointed out that small, poor farmers with little or no land are an essential component of commercial agriculture in El Salvador.

According to Burke, the function of the micro-farms is to produce food cheaply, and to provide an ample and cheap labor supply for the big haciendas producing cash crops. Since two or three or five acres on a hillside will produce less than a poverty-level annual income, and since the corn and beans are harvested in the fall, the system produces tens of thousands of unoccupied farmers eager to hire themselves out as wage laborers on the big commercial farm at the time when the export crops are ready for harvesting.

Thanks to the micro-farms and the reliable seasonal unemployment they produce at the right time of the year, the big-farm operators do not need to maintain more than a bare minimum of permanent employees. Costs are reduced and profits

are increased. This is the system that land reform threw a wrench into, and somehow the landowners who controlled the micro-farms want to get back to the old system—even if people have to be killed in the process.

During the summer of 1980 an informal survey of tenant farmers showed that 17 percent said they knew of problems caused by Decree 207, and only 14 percent said that they knew someone who had problems with his former landlord. Three fourths of them said that they had not talked with the landlord since Decree 207 was announced. Only 11 percent mentioned evictions or getting rent money back. The government postponed publishing ground rules for filing claims, and the summer ended with a good corn crop and relatively few evictions and little violence.

In December 1980, the American nuns were killed, Napoleon Duarte became president of the governing junta, and regulations on how small tenant farmers could file a claim were quietly published. A little over a week later the head of the land reform program was killed along with two American advisors. Two prominent San Salvador businessmen were accused of the crime.

In addition to directing the government land reform program, José Rodolfo Viera was head of the largest peasant organization in the country, the Unión Comunal Salvadoreña. Despite the intimidating intent of the murders, some 300 UCS outreach workers started going out to tell tenant farmers how they could file ownership claims for the micro-plots they were farming.

It was over two months before the national leaders of the UCS had the nerve to get together (making an easy target) and take stock of the situation. About 50 peasant leaders were present from 10 of the 14 provinces. At the meeting they heard that six of the outreach workers had been killed while spreading the news of land reform to the *campesinos*. A member of the UCS national executive committee had also been killed a few weeks before the meeting.

At the meeting, the peasant leaders heard that on March 6, 1981, soldiers killed a UCS outreach worker and his brother in Sonsonate province. In Santa Ana province, two outreach workers were killed, and a small farmer was wounded. There were reports of evictions of small farmers from their homes and farms in two locations in Santa Ana and one in Sonsonate. Also from Sonsonate there was a report of a colonel telling tenant farmers throughout the province that they would be killed if they filed an ownership claim.

In the central part of the country, a UCS outreach worker was reported killed by government security forces on February 20, 1981 in San Vicente province. The murderers of another UCS outreach worker in La Libertad province were also reported to be government security forces. This phrase is often used to describe the national guard, the national police and the treasury police.

Also in La Libertad a female outreach worker was beaten up and severely injured. ORDEN, an outlawed paramilitary organization was said to be responsible. In La Paz, 25 tenant farmers were among the first to receive provisional ownership titles based on the claims they had filed. But there were also reports that tenant farmers sometimes had to return to government offices many times before their claims were successfully filed.

In the eastern part of El Salvador, which is the poorest region, "constant" death threats to tenant farmers were reported from "landlords and their sympathizers." Many tenant farmers were said to be still paying rent to landlords, although it is illegal according to the land reform laws.

In the eastern province of Morazan, twenty percent of the landlords have already evicted small tenant farmers for fear that they will claim land under Decree 207. In Usulutan, one landlord evicted all 15 of his tenant farmers. In La Union, a landlord evicted six tenant farmers by destroying their houses. In that province three fourths of the tenant farmers are said to be paying illegal rent to landlords for fear of being evicted.

During the UCS leadership meeting reports from all parts of El Salvador made it clear that many landlords with tenant farmers had either evicted them or insisted that they keep paying rent. According to the land reform laws of 1980, both of these actions were, of course, illegal. The reports also made it clear that it was usually difficult and time consuming for a *campesino* to successfully file a claim and get a provisional title for the micro-farm he was renting.

While the UCS was urging tenant farmers to file claims, many did not have the nerve to make such a revolutionary move. The national government set up special offices (called FINATA) all over the country to handle the applications by small (up to 17 acres) tenant farmers, but the bureaucrats in these offices were often unsympathetic and sometimes friends of local landlords.

In April 1981, a survey of small tenant farmers in 10 of the 14 provinces of El Salvador indicated that one third of those questioned said they had been

threatened with eviction. One in four said they had had some problem with their former landlord. And just one year after Decree 207 was announced, 18% said that they had been evicted from the micro-farm they had been renting. The purpose of land reform had been to help the poor tenant farmers, but it was bringing loss of home and farm to nearly one in five.

In the same survey one out of four said they did not expect to be able to farm the same land they had rented the previous year. Thus by the spring of 1981 the evictions, threats and intimidation may have succeeded in reducing the potential benefits of land reform to small tenant farmers by some 25%.

In a place called Loma de la Cruz in the eastern part of El Salvador, one of the farmers interviewed said that he had rented the same five acres for 12 years, and now his landlord was threatening to kill him if he stayed on his micro-farm. During another interview in the same province of Usulutan, another tenant farmer said his landlord told him that if he filed a claim he would be evicted. And in the canton of Concepcion near the city of San Miguel, two farmers who had been renting 3½ acres each were told by their landlord that they would be killed if they didn't get off the land.

Also near San Miguel, a tenant farmer named Domingo Hernandez said during an interview that his landlady, Margot Lopez, threatened to have him killed because he said he "believed in Decree 207." She told him she had already had to have four others killed "to end their thirst for land."

Near the town of San Rafael Oriente, a tenant farmer said that he had been evicted from his three acres so that his landlord could rent to someone who would not file a claim. He tried to file a claim, but was told that he did not have the required documents. (The land reform law does not require documents to file a claim, but it does require witnesses.)

Some of those interviewed said that the landlord had moved them from one plot to another of the same size. By doing this the landowner expects to reduce the chance that the tenant farmer will file an ownership claim on the previous plot—the only one covered by Decree 207. Such maneuvers have reduced the number of violent evictions and have probably reduced the amount of land which will be claimed by tenant farmers.

During the last half of 1981 the situation for tenant farmers in El Salvador got worse. Widespread evictions were carried out by armed landholders along with paramilitary mercenaries and out-of-uniform military personnel. At the same time the number of applications accepted by FINATA offices from tenant farmers was reduced. It may not have been an organized conspiracy, but it seemed that the landed oligarchy was reasserting itself and winning the battle against land reform.

In September of 1981 reports from most provinces showed a sudden increase in violence against tenant farmers. In San Ildefonso in the province of San Vicente, a *campesino* was killed three days after filing a claim for the land he was renting. His neighbors said his landlord had given the orders for the murder.

On September 9, 1981, in the province of Morazan, a dozen UCS outreach workers were taken to the police station in Sociedad. Their names and addresses were taken, and they were told that if they did not stop their subversive and criminal activity they would be killed.

During the second week of September, there were similar reports from six other provinces. Local authorities and security forces seemed to be working in concert to defeat agrarian reform. A total of at least 50 outreach workers were told that they would be killed if they did not stop their "subversive activities."

In the first half of October there were reports that nine tenant farmers had been killed in one part of Morazan and 12 more in another area. La Paz reported four *campesinos* killed, San Vicente reported four killed, and La Libertad, 3—a total of at least 11 murders of tenant farmers in central El Salvador. In the same period there were reports of over 100 small farmers evicted.

In Texistepeque in the province of Santa Ana, the national guard contingent was reported to be working with local landholders against the land reform program.

About five o'clock on a Sunday afternoon in November 1981, several armed men dragged Miriam Guerrero, a UCS outreach worker, from her home in San Vicente province, and she is presumed dead. In Morazan province, Lucas Gonzalez, an outreach worker was taken from his house in Sociedad at night, and has not been seen since. Dozens of other agrarian reform workers have been told they would be killed if they kept on with their work, and these disappearances are presumably designed to increase their fears.

Two UCS outreach workers went into the municipal building in Tepetitan

to make a formal request to visit *campesinos* in the surrounding areas. The local commander of civil guards forced them to lie on the floor, ordered guns put to their heads, and told them they would be killed if they continued their work.

Eighteen *campesinos* were killed in November in Santa Ana province and three others disappeared. During November there were reports of murders of tenant farmers, forced evictions and death threats from about one-fourth of the "secure" areas of the country where there are substantial numbers of tenant micro-farms.

The Christmas season reduced the campaign of anti-reform violence, but on December 16, 1981, both the president and vice-president of a new co-op of small farmers in La Paz were dragged from their homes and killed. In San Vicente five soldiers came to the home of an outreach worker, called him a subversive, and threatened to kill him.

In Tepecoyo, several tenant farmers who had just received provisional titles of ownership were told by local landowners that they would be killed if they dared to occupy their micro-farms. 1981 ended with thousands of former tenant farmers converted into landless peasants.

During the first two months of 1982, the level of violence and threats directed at tenant farmers and agrarian reform workers increased substantially. Many landlords told tenant farmers that the land reform would be cancelled after the elections in March, and that the micro-farms would stand empty in the summer of 1982 unless the old order was restored and rent was paid to the landlords.

The landed oligarchy, out of power since October 1979, made a comeback in the elections of March 28, 1982, when 60 percent of the vote and the majority of the seats in the constituent assembly went to several right wing parties. On May 18, the constituent assembly made its first major move against the agrarian reform program. It voted to suspend Decree 207—the law which gave tenant farmers a chance to become owners of their micro-farms. The suspension was for one planting cycle. For corn and beans this would mean one year.

However, this was actually the final legislative act in a long and violent campaign to roll back this part of the land reform program and put poor farmers in the position of begging the landlord to rent him a few hillside acres on which to plant his corn and beans.

Jorge Ruíz Camacho, president of the ACOPAI peasant organization, has estimated that 3,600 peasants have been killed because they tried to file a claim to a few acres under Decree 207. The Unión Comunal Salvadoreña estimates that 8,600 peasants have been evicted from land they tried to claim, and that 3,600 of these were evicted since the elections at the end of March.

The government of El Salvador says that 29,261 tenant farmers have filed claims for ownership of micro-farms. If the estimates of those who have been murdered and evicted are approximately right, then there are some 18,000 *campesinos* who may be planting corn and beans on their few hillside acres in El Salvador. This is about 14 percent of the 125,000 tenant farmers who could have filed claims.

Seven years ago Colonel Artuco Molina, then president of El Salvador, decided to carry out a small land reform project. The government was to buy 145,000 acres (considerably less than the 177,000 acres said to be owned by six families) and create cooperative enterprises for landless peasants. The Party of National Conciliation, which had been in power since 1962, sponsored the bill in the National Assembly, and it was signed into law by Colonel Molina on June 30, 1975.

The landed obligarchy decided that this departure from the status quo could not be tolerated, even though it affected land in only 10 of the country's 260 municipalities. Speaking through ANEP—the National Association for Private Enterprise—it not only crushed the small agrarian reform project but got the legislative assembly to pass a law saying that the government did not have power to expropriate cultivated land. There the matter stood until another colonel, Adolfo Majano, signed the land reform acts of March and April, 1980.

Many of the poor tenant farmers of El Salvador remember the 1975 effort at land reform, and how it was crushed by the wealthy landowners. And many of them were not surprised that Decree 207 was suspended in May, 1982.

There are three figures which help to explain the increasing pressure for land reform in El Salvador: The number of rural landless families increased from 30,000 in 1961 to 112,000 in 1971 to 167,000 in 1975.

[Whereupon, at 6:15 p.m., the committee adjourned, subject to call of the Chair.]

○